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IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

In the Matter of WILLIAM REICHERT and PAUL KOLLMAR, Individually and Trading Under the Firm Name of W. REICHERT & Co., Alleged Bankrupts

PETITION FOR INVOLUNTARY BANKRUPTCY

To the Honorable Judges of the District Court of the United States, for the Southern District of New York:

The petition of the County Trust Company of New York, Nyamco Associates, Inc., and Republic Storage Co., Inc., respectfully shows, upon information and belief:

1. The said William Reichert and Paul Kollmar are and have been co-partners doing business under the firm name and style of W. Reichert & Co. for the greater portion of the six months next immediately preceding the date of the filing of this petition and had their place of business and resided in the Southern District of New York, to wit: They had their place of business at No. 15 West 37th Street, in the Borough of Manhattan, in the City of New York. The said William Reichert resided at 70 Fenimore Road, Mamaroneck, N. Y., and the said Paul Kollmar resided at 41 Bon Air Avenue, New Rochelle, N. Y.

[fol. 2] 2. The said William Reichert and Paul Kollmar are neither wage earners nor persons engaged chiefly in farming or in the tillage of the soil but are in the jewelry business.

3. The said William Reichert, Paul Kollmar and the firm of W. Reichert & Co. are insolvent and owe debts to the amount of more than one thousand ($1,000) dollars, to wit: more than thirty-five thousand ($35,000) dollars.

4. Your petitioners are creditors of the said William Reichert and Paul Kollmar composing the partnership firm of W. Reichert & Co. and of the firm of W. Reichert & Co. and have provable claims against them amounting, in the aggregate (in excess of securities held by them), to upwards of $3,019.18.

5. Your petitioners are not entitled to priority upon their said claims within the meaning of the Bankruptcy Act of 1898 (as amended from time to time) nor have your petitioners received preferences within the meaning of the said Act.

6. The nature and amount of your petitioners' claims are as follows:

(a) The claim of the County Trust Company of New York is based upon a promissory note made, executed and delivered by the said William Reichert and Paul Kollmar, composing the partnership firm of W. Reichert & Co., to the County Trust Company of New York, for value, in the sum of $5,200, which has been reduced to $3,019.18. The said note was dated December 21, 1931, and matured February 10, 1932.

[fol. 3] (b) The claim of the Nyamco Associates, Inc. is for rent in the amount of $1,579.88. The claim arises as follows: The owner of the premises No. 15 West 37th Street, New York City, was the Carnelian Trading Corp. The alleged bankrupts did not pay any rent for October, November and December, 1932, or January and February, 1933. And there was a balance for July, 1932, of $125 and a balance for September, 1932, of $200 and an electric light bill of $3.57 and protest fees on a note of $1.33, making in the aggregate $1,579.88. The rents were assigned to the Nyamco Associates, Inc. No part of the said sum of $1,579.88 has been paid.

(c) The claim of the petitioner, the Republic Storage Co., Inc., is for storage of 86 cases of goods, wares and merchandise at the petitioner's place of business, to wit: No. 541 West 34th Street, in the Borough of Manhattan, in the City of New York, from July, 1932, to and including February, 1933, at the agreed rate of $5 per month, making in the aggregate $45.

7. Within the four months next immediately preceding the filing of this petition, the said alleged bankrupts were and still are, insolvent, and while so insolvent committed acts of bankruptcy as follows:

(a) On or about October 18, 1932, the said alleged bankrupts, being then insolvent, made a general assignment for the benefit of their creditors to Elmer Levenson.

(b) During the said period of four months and while so insolvent as aforesaid, the said alleged bankrupts trans-
[fol. 4] ferred a portion of their property to certain of their creditors with intent to prefer those creditors over their other creditors. Those preferences consisted of payments to the following named creditors for the amounts set opposite their respective names:

Name	Amount
Mrs. Johanna Reichert	$600
Mrs. Paul Kollmar	700
Meyer Marlow	500

9. In filing this petition in bankruptcy, your petitioners reserve the right to proceed against the said alleged bankrupts on the claim that the alleged bankrupts obtained property and credit from the petitioners by fraud and deceit.

Wherefore, your petitioners pray that service of this petition, with a subpœna, may be made upon the said alleged bankrupts, as provided by the Bankruptcy Act, and that the said alleged bankrupts may be adjudged bankrupts within the purview of the said Act.

Dated, New York, February 16, 1933.

County Trust Company of New York, by John J. Spillane, Assistant Treasurer. Nyamco Associates, Inc., by George T. Ritchings, President. Republic Storage Co., Inc., by D. C. Griffith, Petitioners.

[fols. 5 & 6] *Duly sworn to by John J. Spillane, George T. Ritchings and D. C. Griffith. Jurats omitted in printing.*

[fol. 7] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO PETITION

To the Honorable Judges of the District Court for the Southern District of New York.

William Reichert and Paul Kollmar, the alleged bankrupts herein, by their attorney, Meyer Marlow, Esq., for

[fol. 8] their answer to the involuntary petition in bankruptcy herein, respectfully show to this Court and allege:

First: Deny each and every allegation contained in subparagraph (b) of paragraph "7" of the petition.

Second: For an affirmative defense, the alleged bankrupts herein allege as follows:

That the petitioning creditors and each of them consented and assented to the making, delivery and filing of the general assignment for the benefit of creditors heretofore executed by the alleged bankrupts and which is an act of bankruptcy alleged in the involuntary petition in bankruptcy herein, and that they consented and assented that the estate of the alleged bankrupt be administered by the assignees under and by virtue of said general assignment and in accordance with the terms thereof and of the provisions of the Debtor And Creditor Law of the State of New York, and participated in the proceedings taken by virtue of said assignment, and that by reason of the laches of the petitioning creditors and each of them in the filing of the petition in bankruptcy herein, and that by reason of all of the aforesaid the petitioning creditors and each of them are estopped from alleging and may not complain of the said general assignment for the benefit of creditors and cannot assert that the same constitutes an act of bankruptcy under the National Bankruptcy Act as amended.

Wherefore, the alleged bankrupts demand judgment dismissing the involuntary petition in bankruptcy, together [fol. 9] with the costs of this proceeding.

Dated, New York, March 2nd, 1933.

William Reichert. Paul Kollmar.

Duly sworn to by William Reichert and Paul Kollmar. Jurats omitted in printing.

[fol. 10] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION FOR LEAVE TO FILE INTERROGATORIES

SIR:

Please take notice that upon the annexed petition of Paul Kollmar, one of the alleged bankrupts herein, the

[fol. 11] proposed interrogatories annexed hereto marked Exhibit "A", and upon the pleadings herein, and upon all the papers and proceedings herein, the undersigned will move this Court at a Stated Term for motions to be held at the Post Office and Federal Building in the Borough of Manhattan, City of New York, on the 5th day of April, 1933, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as Counsel can be heard, for an order allowing the alleged bankrupts to file interrogatories in accordance with said Exhibit "A" to be answered by the petitioning creditors; to wit: County Trust Co. of New York, Nyamco Associates, Inc., and Republic Storage Co., Inc., in accordance with Equity Rule LVIII, and for such other and further relief as to the Court may seem just and proper.

Dated, New York, March 30th, 1933.

Yours, etc., Meyer Marlow, Attorney for Alleged Bankrupts, Office & P. O. Address, 225 West 34th St., Borough of Manhattan, New York City.

To Saul S. Myers, Esq., Attorney for Petitioning Creditors, 60 Wall Street, New York City.

[fol. 12] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION OF PAUL KOLLMAR FOR LEAVE TO FILE INTERROGATORIES

To the Honorable Judges of the District Court for the Southern District of New York:

The petition of Paul Kollmar respectfully shows to this Court:

First: That on or about February 18, 1933, an involuntary petition in bankruptcy was filed herein by County Trust Company of New York, Nyamco Associates, Inc., and Republic Storage Co., Inc.

Second: That the acts of bankruptcy alleged in said petition is the making and filing of an assignment for the benefit of creditors on or about October 18, 1932, and the transfer of property by the alleged bankrupts alleged to have created preferences.

Third: That on or about March 2, 1933, the alleged bankrupts herein served and filed an answer to such involuntary

petition, in which they deny the alleged preferences. The [fol. 13] said answer, however, admits the making and filing of the general assignment for the benefit of creditors, but sets up as a special defense that the petitioning creditors had consented and assented to the administration of the bankrupts' estate under a general assignment for the benefit of creditors, and participated in the proceedings taken by virtue of said assignment, and that by reason thereof they are estopped from alleging, and cannot assert, that the making of the general assignment constitutes an act of bankruptcy.

Fourth: The said involuntary petition in bankruptcy is verified by John J. Spillane, as Assistant Treasurer of the County Trust Company of New York, by George T. Ritchings, as President of Nyamco Associates, Inc., and by D. C. Griffith, as President of Republic Storage Co., Inc.

Fifth: That the alleged bankrupts desire to file the interrogatories hereto annexed, marked Exhibit "A", to be answered by the respective persons aforementioned, and request an order under Equity Rule LVIII allowing your petitioner to file such interrogatories to be so answered.

Sixth: That the said answers sought to be elicited by said interrogatories are material to the special defense set forth in the answer filed by the alleged bankrupts as aforesaid and will assist and aid the alleged bankrupts in preparing their proof under said special defense. That the information sought is peculiarly within the knowledge of the peti- [fol. 14] tioning creditors. That the letters and notices which are requested to be attached to the answers to the interrogatories are not in the possession of the alleged bankrupts, but are in the possession of the petitioning creditors. Finally, the production of this proof by the petitioning creditors will substantially shorten the trial of the issues.

Wherefore, petitioner prays that an order be made herein allowing them to file such interrogatories to be answered as aforesaid.

Dated, New York, March 30th, 1933.

Paul Kollmar, Petitioner.

Duly sworn to by Paul Kollmar. Jurat omitted in printing.

[fol. 15] EXHIBIT "A" TO PETITION

1. Did you or your Company receive from Elmer Levenson as assignee of the alleged bankrupt herein, or from Goldman & Frier, the attorneys for the said assignee, notices that he would sell the assets assigned to him by the said alleged bankrupts? If the answer is in the affirmative, please attach hereto the original or copy of said notice.

2. Did you or your Company receive from the said Elmer Levenson or his said attorneys, notices or letters requiring creditors to file their claims against the assignor in verified form? If your answer is in the affirmative, please attach hereto the original or copy of said letters or notices.

3. Did you or your Company receive letters or notices from the said assignee or his attorneys, or from either of them, other than those hereinabove referred to or requested? If your answer is in the affirmative, please attach hereto the originals or copies of such letters or notices.

4. Did you or your Company file statements of claim in the assignment proceeding with the said assignee or his attorneys, or with any other person, firm, company or organization? If your answer is in the affirmative, please state with whom such statement of claim was filed and when same was filed; and if more than one statement of claim was filed give the particulars as to when and with whom each was filed.

[fol. 16] 5. Did you or your Company file a verified proof of claim in the assignment proceeding with the said assignee or his attorneys, or either of them, or with any other person, firm, Company or organization? If your answer is in the affirmative please state with whom such verified proof of claim was filed and when same was filed, and if more than one proof of claim was filed give the particulars concerning when and with whom each was filed.

6. Did you or your Company or any attorney or person on your behalf send any letters or notices in addition to the aforesaid proofs of claim and statements of claim to the assignee or his attorneys, concerning the administration of the assigned estate? If your answer is in the affirmative, please state when and to whom said notices or

letters were sent and please attach hereto copies of such letters or notices.

You are required to answer each of the foregoing interrogatories under oath.

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF SAUL S. MYERS

STATE OF NEW YORK,
County of New York, ss:

Saul S. Myers, being duly sworn, deposes and says:

(1) I am the attorney herein for the petitioning creditors. I am making this affidavit because I have had personal charge of this bankruptcy proceeding from the beginning, and I am acquainted with the facts.

(2) The petition in bankruptcy was filed herein on February 18, 1933. It was filed by the County Trust Company of New York, with a claim of $3,019.18, by the Nyamco Associates, Inc. (a subsidiary of the New York Title & Mortgage Company), with a claim of $1,579.88 and by the Republic Storage Co., Inc., with a claim of $45.00.

[fol. 18] (3) The alleged bankrupts' answer admits the entire petition in bankruptcy with the exception of paragraph 7, subd. (b). That is a denial of certain preferential payments but that allegation and that denial are immaterial on this motion in view of the fact that the alleged bankrupts expressly admit an act of bankruptcy by the making of a general assignment for the benefit of their creditors.

(4) Upon the coming in of the answer, Judge Coxe on March 27, 1933, made an order referring to Mr. Coffin, as Special Master, the issues raised by the said petition and the said answer, for hearing and report; but the alleged bankrupts have taken no steps to bring those issues to trial. On the contrary, they have done everything except try the issues, all in violation of Rule 12 of the Rules of the Southern District of New York.

(5) The only issue raised by the said petition and the said answer is an alleged affirmative defense as follows: The alleged bankrupts say that the petitioning creditors "and each of them" consented to the said assignment for the benefit of creditors and assented that the estate of the alleged bankrupts be administered by the assignee under the Debtor and Creditor Law of the State of New York and "participated in the proceedings taken by virtue of said assignment," and that each one of the petitioning creditors is now estopped from proceeding in bankruptcy.

(6) I am satisfied so far, at least, as the County Trust Company of New York is concerned, that that petitioning [fol. 19] creditor never consented to the said assignment for the benefit of creditors, never assented that the estate of the alleged bankrupts be administered by the assignee and never participated in the assignment proceedings in any manner.

(7) I have had charge of this claim on behalf of the County Trust Company of New York since February, 1932. First, the alleged bankrupts secured an extension of time from their creditors and made some payments on account. These payments reduced the claim of the County Trust Company of New York from $5,200 to $3,019.18. Then, on or about October 18, 1932, the alleged bankrupts made an assignment for the benefit of creditors and have attempted to have their affairs wound up by a friendly assignee in violation of the spirit and intent of the National Bankruptcy Act of 1898 as amended from time to time. Neither the County Trust Company of New York nor I filed any claim in that assignment proceeding nor participated in it in any manner. I annex hereto the affidavit of John J. Spillane, Esq., Assistant Treasurer of the County Trust Company of New York.

(8) If, therefore, the petition in bankruptcy is good so far as concerns the County Trust Company of New York, I respectfully submit that an adjudication in bankruptcy must follow as a matter of course on the said petition and on the said answer regardless of any steps taken by the other two petitioning creditors in the manner claimed by the alleged bankrupts in their answer herein. If the contention of the alleged bankrupts in their answer be correct, [fol. 20] then all creditors with the exception of the County

Trust Company of New York have become parties to the assignment proceeding and are not such creditors as may file or join in a petition in bankruptcy or reap the benefits of such a petition in bankruptcy. The order of reference of Judge Coxe of March 27, 1933, should therefore, I respectfully submit, be recalled for the reason that a reference is wholly unnecessary and would result in an unwarranted expense to the petitioning creditors and an order of adjudication should be entered forthwith and the proceeding referred to Mr. Coffin as Referee in the usual manner. The alleged bankrupts have not given any indemnity for the expenses of the reference as required by Rule 12 of the Rules of the Southern District of New York.

(9) The reason for the filing of the petition in bankruptcy is this: No dividends appear to be available for the creditors in the said assignment proceeding. The County Trust Company of New York has not received any information in respect of the value of the estate nor the extent of the liabilities nor the allowances or proposed allowances to the assignee, his attorneys, accountants, auctioneers, etc. But I do know that on or about February 23, 1932, the alleged bankrupts verbally informed deponent that their assets totalled $84,014.35; and that the principal items were Cash in bank $2,119.37, Receivables (good) $43,385.98 and Inventory $37,493.75. I also say that on March 8, 1933, Joseph Frier, the attorney for the assignee, Elmer Levenson, informed me that the assets only amounted to $5,200 and that all the assets had been reduced to cash. [fol. 21] An examination of the papers in the said assignment proceeding by me justifies me in stating to this court that that proceeding requires a thorough investigation in this proceeding. The statement of W. Reichert & Co. to the County Trust Company of New York as the basis of credit, dated December 31, 1931, is as follows:

W. Reichert & Co.

Statement of Financial Condition December 31, 1931

Assets

Current Assets—	
Cash in banks	$ 2,119.37
Cash on hand	16.91
Customers' accounts receivable (good)	43,385.98

Customers' notes receivable	$3,565.95		
Less: Notes discounted	2,567.61		
		998.34	
Merchandise inventory (cost or market, the lower)		37,493.75	
			$84,014.35
Other Assets—			
Furniture, fixtures & equipment	$9,010.81		
Less: Reserve for depreciation	5,964.21		
		$3,046.60	
Advances to salesmen on commission accounts		9,450.31	
			12,496.91
Total Assets			$96,511.26

[fol. 22] Liabilities & Capital

Current Liabilities—			
Notes payable to banks		$15,200.00	
Notes payable to others		2,050.00	
Accounts payable for merchandise		21,086.51	
			$38,336.51
Other Liabilities—			
Loans payable (partners' relatives)			$ 7,060.00
Total Liabilities			$45,396.51
Capital			51,114.75
Total Liabilities & Capital			$96,511.26

(10) So far as the proposed interrogatories are concerned, the County Trust Company of New York has answered the same by the annexed affidavit of John J. Spillane, Esq.

Saul S. Myers.

Sworn to before me, this 20th day of June, 1933. Rose M. Silich, Notary Public. N. Y. County Clerk's No. 238. N. Y. Register's No. 4S967. Commission expires March 30, 1934.

[fol. 23] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF JOHN J. SPILLANE

STATE OF NEW YORK,
County of New York, ss:

John J. Spillane, being duly sworn, deposes and says:

(1) I am Assistant Treasurer of the County Trust Company of New York. I have had charge of the claim of the County Trust Company of New York against the alleged bankrupts herein since at least the beginning of 1932.

(2) In reference to the proposed interrogatories: The County Trust Company of New York received a notice of sale dated October 26, 1932. The County Trust Company of New York received on January 7, 1933, a notice to file claims. The County Trust Company of New York did not receive any other letters or notices from the assignee for the benefit of creditors or his attorneys or from either of [fol. 24] them. The County Trust Company of New York did not file any statements of claim in the assignment proceeding in the State of New York either with the said assignee or with his attorneys or with any other person, firm, company or organization. The County Trust Company of New York did not file any verified proof of claim in the said assignment proceeding with the said assignee or with his attorneys or with either of them or with any other person, firm, company or organization. Neither did the County Trust Company of New York nor its attorneys nor any person on its behalf send any letters or notices to the said assignee or to his attorneys.

John J. Spillane.

Sworn to before me this 20th day of June, 1933. John C. Greller, Notary Public, Queens County. Queens Co., Clks. No. 628, Reg. No. 4598. N. Y. Co., Clks. No. 79, Reg. No. 5-G-38. Commission expires March 30, 1935. (Seal.)

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING LEAVE TO FILE INTERROGATORIES

The alleged bankrupts having moved for leave to file interrogatories,

Now, on reading and filing the notice of motion of the alleged bankrupts, dated March 30, 1933, and the petition of Paul Kollmar, one of the alleged bankrupts, verified March 30, 1933, in support thereof, and

On reading in opposition thereto the affidavits of Saul S. Myers and John J. Spillane, each sworn to June 20, 1933, and

After hearing Stanley M. Dorman, Esq., of counsel for the alleged bankrupts in support of the motion and Joseph K. Guerin, Esq., of counsel for the petitioning creditors in opposition, it is

Ordered that the said motion be and it hereby is in all respects denied, and

It appearing from the affidavits filed in opposition to the said motion and from the answer and other papers on file herein that no substantial issue has been raised by the said answer, it is further

Ordered that the order of reference of "the issues raised by the petition in bankruptcy and the bankrupts' answer [fol. 26] herein," be vacated and that the Clerk of this Court enter an order of adjudication in the usual form.

Dated, June 24, 1933.

Alfred C. Coxe, U. S. D. J.

IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK.

In Bankruptcy

No. 56603

In the Matter of WILLIAM REICHERT and PAUL KOLLMAR, individually and as Co-partners, doing business under the firm name and style of W. Reichert & Co., Alleged Bankrupts

ADJUDICATION AND ORDER OF REFERENCE

Invol. Pet. filed Feb. 18, 1933.

Bankrupt's address: 15 West 37th St., N. Y. C.

At New York City, in said District, on the 27th day of June, A. D. 1933, before the Honorable Frank J. Coleman, Judge of the said Court in Bankruptcy, the petition of County Trust Company of New York, et al., that William Reichert and Paul Kollmar, individually and as co-partners, doing business under the firm name and style of W. Reichert & Co., be adjudged bankrupt, within the true in-
[fol. 27] tent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered and adjudication having been directed in order of Court filed June 26, 1933, the said William Reichert and Paul Kollmar, individually and as co-partners, doing business under the firm name and style of W. Reichert & Co., hereby declared and adjudged bankrupt accordingly.

And it is further ordered that the said bankrupt file schedules in triplicate as required by law within ten days from the date hereof.

And it is further ordered that the said matter be referred to Harold P. Coffin, Esq., one of the referees in bankruptcy of this Court to take all such further proceedings therein as are required by said Acts of Congress, and all such acts therein as the Court might take or perform, except such as by law or the general orders of the Supreme Court are required to be performed by the Judge; and that the bankrupt shall attend before said referee on the 1st day of July, 1933, at 10 o'clock a. m., and thenceforth shall submit to such orders as may be made by said referee or by the Court relating to said bankruptcy.

Witness the Honorable Frank J. Coleman, Judge of the said Court, and the seal thereof, at the City of New York, in said District, on the 27th day of June, A. D. 1933.

[SEAL.] Charles Weiser, Clerk.

A true copy.

Charles Weiser, Clerk.

[fol. 28] IN UNITED STATES DISTRICT COURT

[Title omitted]

SPECIFICATIONS IN OPPOSITION TO PETITION FOR DISCHARGE

Now comes Lawyers County Trust Company (formerly the County Trust Company of New York), a creditor of the above named bankrupts, and does hereby oppose the

granting to them of a discharge from their debts, and for the grounds of such opposition, does file, upon information and belief, the following specifications:

Specification No. 1

(1) The bankrupts, in violation of the National Bankruptcy Act, Sect. 14b(3), U. S. C. A. Title 11, Sect. 32b(3), obtained money on credit and extensions and renewals of credit, by making and publishing and causing to be made and published, a materially false statement in writing respecting their financial condition in the following manner:

[fol. 29] On February 20, 1931, the bankrupts obtained from the said County Trust Company of New York a loan of $10,000 by making, publishing and delivering to the said County Trust Company of New York a materially false statement in writing respecting their financial condition. The said statement was submitted on February 20, 1931, and purported to show the financial condition of the bankrupt partnership as of December 31, 1930. A copy of the said statement is hereto annexed and marked "Exhibit A."

The said statement submitted on February 20, 1931, was not true in the following particulars, among others:

(a) It was not true, as stated in the said statement, that the bankrupts had as assets an item of "Accts. Receivable (Good—not pledged) $117,389.13." The bankrupts did not at that time have good accounts receivable of the value of $117,389.13 but in truth and in fact the good receivables—not pledged—did not exceed the sum of $60,000.

(b) It was not true that at that time the bankrupts had as assets an item, "Notes Receivable (Good—not pledged) $749.72." The bankrupts did not at that time have good notes receivable unpledged in the sum of $749.72 but in truth and in fact had discounted all of their good notes receivable, and the said $749.72 of notes receivable had little, if any, value.

(c) It was not true that at that time the bankrupts had as assets an item of

[fol. 30] "Mdse. Finished, " Unfinished, " Raw } cost or market lower } 57,910.90"

The bankrupts did not have on hand at that time merchandise of the market value of $57,910.90 but in truth and in fact the true market value of the merchandise at that time was about one-half of $57,910.90.

(d) It was not true that at that time the bankrupts had as assets an item of "Furniture and Fixtures $8,955.81 less reserve of $4,162.05" but in truth and in fact the furniture and fixtures of the bankrupts had no more than junk value. The net book value of this item in February, 1932, was only $3,046.60 and that value represented the actual cost of the furniture and fixtures less depreciation since acquisition. At this time, to wit, February, 1932, this asset was several years old and its value was highly problematical.

(e) It was not true that at that time the bankrupts had as assets an item "Cash on hand $5,635.60" but had much less cash on hand the exact amount of which cannot at this time be definitely ascertained. It will require a careful examination of the books and records of the bankrupts.

(f) It was not true that at that time the bankrupts only owed as current debts $78,724.09 but in truth and in fact the bankrupts owed considerably more in the nature of current debts, the exact amount of which cannot at this [fol. 31] time be definitely ascertained. It will require a careful examination of the books and records of the bankrupts. For instance, according to the books and records of the bankrupts the partnership at that time owed additional sums of money to the extent of $7,960 to relatives of the individual bankrupts.

(g) On the said statement under the heading: "If adjustments involve important amounts, please give details below" the bankrupts stated:

"12,778.62	Partner's drawings during 1930
7,960.00	Partner's loans deducted
4,818.62	adjustment in capital."

Such information was false in the following particulars:

The financial statement (Exhibit A), indicates that the individuals partners, William Reichert and Paul Kollmar, had loaned the firm of W. Reichert & Co. $7,960. The

books of the partnership, however, show that at that time there were no outstanding loans from the partnership to the individual partners, William Reichert and Paul Kollmar. On the contrary the books showed that loans in practically that same amount had been made by the wives of the individual partners to the partnership. And the books therefore very clearly indicated that the item of $7,960 was a current debt of the partnership. And that current debt should therefore have been shown upon the statement given by the partnership to the County Trust Company of New York.

[fol. 32] In fact at no time had there been any adjustment in the capital account on the books of the bankrupts and this current indebtedness of the bankrupts was carried right down to the end of 1931 as is shown upon a written financial statement given by the bankrupts to the County Trust Company of New York in February, 1932, as of December 31, 1931. In that statement there appears among the other liabilities "Loans payable (partners' relatives) $7,060."

The statement about the partners' loans was intentionally misleading and was given to the County Trust Company of New York so as to have it appear that there were no loans to relatives of the individual bankrupts and also for the purpose of diminishing the current liabilities.

The said loan was, upon the strength of Exhibit A, renewed from time to time, to wit, on May 20, 1931, June 22, 1931, September 21, 1931 and December 21, 1931.

On December 14, 1933, the bankrupt Reichert testified before Referee Coffin at the first meeting of creditors herein as follows:

"Q. At that time there was an indebtedness, wasn't there, on the part of your firm to your wife Mr. Kollmar's wife, and Mr. Kollmar's father-in-law, which aggregated $6,060?

A. Yes.

Q. Is that so?

A. Yes.

Q. Where in this statement is there any statement regarding that indebtedness, aggregating $6,060?

A. That is not in here, that was capital at that time.

Q. I don't understand.

[fol. 33] A. We intended to repay that during the year, that $6,000. We figured it as capital.

Q. I know, but you appreciate, don't you, that when people lend money they are going to be influenced by the amount of money that the persons they are lending it to owe others?

A. Yes.

Q. And don't you realize that the amount of money that you and your partner owed members of your family respectively, which were debts of the company, were liabilities that might have influenced the County Trust Company in determining whether they would lend that $10,000 or not?

A. Our accountant stated it was perfectly all right, he said, 'If you consider that as a personal loan,' we could figure that as part of our capital.

Q. If you figured it as part of your capital, then, it could not have been a loan by members of your families. There must have been some arrangement with them whereby it was to be treated as capital of the company and not to be a loan, isn't that so?

A. We were supposed to repay that during the year.

Q. You don't answer the question. If that money was to be repaid as a loan, why doesn't it appear in here as a liability of your company?

A. Because we considered it as capital.

Q. Was it capital, not what you considered it, what was it?

A. In here it was capital.

Q. When did it cease to become capital and become an indebtedness that was to be repaid?

A. At the end of that year.

[fol. 34] Q. Who decided it?

A. We decided it.

Q. Didn't you discuss it with the people that loaned the money?

A. No.

Q. You and your partner simply changed your minds about it and decided it was to be money owed to members of your families and would have to be repaid, is that so?

A. It seems that way.

Q. Will you tell me what you mean by this item, which I find on this sheet; you have here in the statement $12,-

778.60, partners' drawing during 1930, and you have this item $7,960, partners' loan deducted, and subtracting one from the other, you have an item of $4,881.62, adjustment in capital, what do you mean by that?

A. This must be the loans—personal loans we mentioned before.

Q. The $7,960?

A. Yes."

And the bankrupt Kollmar testified:

"Q. You have heard the testimony that Mr. Reichert has just given?

A. Yes.

Q. Regarding the $10,000 loan from the County Trust Company and regarding the statement that you both signed?

A. Yes.

Q. I show you the statement and I ask you if you recognize your signature here as well?

A. Yes.

Q. Have you any explanation to make regarding the loans by members of your family and also Mr. Reichert's family, contained in here, other than the explanation made by Mr. Reichert?

A. None at all.

Q. Have you any different explanation to make than Mr. [fol. 35] Reichert made as to the item of $7,960, and setting that up as partners' loan deducted?

A. No.

Q. What is the answer?

A. No."

On December 21, 1933, the bankrupts attempted to explain away their previous testimony and the following took place before Referee Coffin at the first meeting of creditors:

"Mr. Reichert: I wish to make the following statement for the purpose of clarifying and amending the testimony given at the last hearing, in reference to certain loans made by relatives of myself.

In 1930, Mrs. Reichert lent me certain moneys which I, in turn, gave to the business immediately. This loan was made to me and not to the partnership but I presume that since the money was immediately put into the business, the

bookkeeper, without having asked me as to the method of entry of these loans, made up certain loan accounts showing these loans to have been made to the partnership itself.

When the financial statement of December, 1930, was made up, Mr. Kollmar and myself told the accountant, upon his inquiry, that such loans as were from relatives, were not actual loans payable of the partnership, but were loans to the partners who in turn had given them to the partnership as additional contributions to capital. The accountant did not list these loans from relatives, therefore, as partnership liabilities upon the balance sheet, but showed [fol. 36] these loans in the adjustment of capital as a deduction from partners' drawings during 1930 in the sum of $12,778.62. The 'partners' drawings' then represents the $6,000 annual drawings for each partner plus some traveling expenses, this item being a decrease in capital. The $7,960, partners' loans deducted item, represents the additional contributions to capital, made by both Mr. Kollmar and myself, by means of these loans from relatives.

At the time the schedules were made up, we did not know that there was any distinction made between partnership and individual creditors and, therefore, did not explain to our attorney that these loans from relations were individual debts and not partnership debts. We have been informed by our attorney of this error and will amend the schedules accordingly.

Mr. Stevenson: Do you, Mr. Kollmar, want to make a statement?

Mr. Kollmar: I wish to make a similar statement in reference to loans made by Mrs. Reichert, Mrs. Kollmar and Mr. Ponsky." (*sic* Mr. Prinsky.)

(2) Not only was the financial statement hereinabove referred to false but it was known by the bankrupts to be false at the time it was made and such statement was made by the bankrupts with the intention of having it relied on by the said County Trust Company of New York on extending the said credit and on extensions and renewals of such credit to the bankrupts; and said statement was in fact so relied upon, and such credit and extensions and [fol. 37] renewals thereof would not have been given except in reliance upon the said written statement so made by the bankrupts.

Specification No. 2

(3) The bankrupts, in violation of the National Bankruptcy Act, Sects. 14b(1) and 29b(3) U. S. C. A. Title 11 Sects. 32b(1) and 52b(3), knowingly and fraudulently, while acting as the agents, proxies and attorneys for their wives and one Morris Prinsky (father of Mrs. Paul Kollmar) presented under oath in this proceeding proofs of debt against the estate herein as follows:

Morris Prinsky	$ 900.00
Mrs. Paul Kollmar	2,600.00
Mrs. Wm. Reichert	3,560.00

If as stated by the bankrupts in their statement to the County Trust Company of New York, marked Exhibit A, the item of $7,960 did not represent monies owing by the partnership to the bankrupts' wives and to Morris Prinsky, then and in that event those parties were not creditors of the bankrupt partnership and the individual bankrupts should not have filed or caused to be filed or allowed to be filed the said three proofs of debt.

Specification No. 3

(4) The bankrupts, in violation of the National Bankruptcy Act, Sects. 14b(1) and 29b(2) U. S. C. A. Title 11 [fol. 38] Sects. 32b(1) and 52b(2), knowingly and fraudulently made a false oath and account in and in relation to the bankruptcy proceeding herein as follows:

(a) By making a false oath to Schedule A of their schedules in bankruptcy, to the effect that the bankrupt partnership was indebted to Mrs. Paul Kollmar in the sum of $2,600, to Morris Prinsky in the sum of $900 and to Mrs. Wm. Reichert in the sum of $3,560 whereas in truth and in fact the said bankrupt partnership was not indebted to said persons in any amount whatsoever.

(b) On December 11, 1933, the bankrupts testified before Referee Coffin at the first meeting of creditors that the advances made by their wives and by Morris Prinsky were made in cash and that all of the money was drawn by those parties out of savings banks whereas in truth and in fact only a part of the advances was made in cash and only a part of the money came from savings banks. When in-

terrogated by counsel for the Irving Trust Company, the trustee in bankruptcy herein, the bankrupts agreed to return at the adjourned hearing with the savings banks records to substantiate their testimony. They returned at the adjourned hearing but instead of producing the records from the savings banks they changed their testimony and told an entirely different story. They then testified that the cash was not all taken from savings banks but some came from California and some came from a private box of Mrs. Reichert kept at her home.

[fol. 39] Neither the private box nor any records of the California transaction were produced.

(c) On December 11, 1933, the bankrupts testified before Referee Coffin at the first meeting of creditors herein that they had no property, real or personal, separate and apart from the assets in the firm of W. Reichert & Co. whereas in truth and in fact each one of the individual partners had an interest in real property. The bankrupt William Reichert, some years ago, purchased a home at No. 70 Fennimore Road, Mamaroneck, Westchester County, New York. He purchased the property out of monies belonging to the bankrupt partnership. He took title in the name of his wife but he personally went on the bond securing the mortgage on the premises, he personally paid the interest, taxes, water rates and assessments, he personally exercised dominion over the property and he personally, to all intents and purposes, now owns the property. Any contributions by his wife toward the purchase of this property were monies given by the bankrupt to his wife and saved by her. The wife of the bankrupt Reichert had no independent resources. The bankrupt Paul Kollmar, some years ago, purchased a home at No. 41 Bon Air Avenue, New Rochelle, Westchester County, New York. He purchased the property out of monies belonging to the bankrupt partnership. He took title in the name of his wife but he personally went on the bond securing the mortgage on the premises, he personally paid the interest, taxes, water rates and assessments, he personally exercised dominion over the property [fol. 40] and he personally, to all intents and purposes, now owns the property. Any contributions by his wife toward the purchase of this property were monies given by the bankrupt to his wife and saved by her. The wife of the bankrupt Kollmar had no independent resources.

Specification No. 4

(5) The bankrupts, in violation of the National Bankruptcy Act, Sect. 14b(7) U. S. C. A. Title 11, Sect. 32b(7) have failed to explain satisfactorily losses of assets and deficiency of assets to meet their liabilities as follows:

(a) In the said statement to the County Trust Company of New York, marked Exhibit A, the bankrupts stated their total current assets to be $181,685.35

This was as at December 31, 1930. In their statement to the County Trust Company of New York as at December 31, 1931 these assets were put down as ..... $ 96,511.26

In a statement prepared by Henry Brout, certified public accountant employed by the Creditors' Committee in February, 1932, these assets were put down as of February 29, 1932 at ..... $ 47,433.82

In October, 1932, the bankrupts made an assignment for the benefit of their creditors and the assignee reported these assets as follows:

[fol. 41] Nominal Assets—

Merchandise	$ 4,444.00
Accounts Receivable	9,009.77

Actual Assets—

Merchandise	3,225.91
Accounts Receivable	Unknown

And the assignee in accounting to this Court shows that he collected ..... $ 5,936.41
and spent ..... $ 2,124.12

(b) The bankrupts have not satisfactorily explained what has become of their respective homes in Mamaroneck and New Rochelle.

(c) The bankrupts have not satisfactorily explained what has become of the cash and the good receivables which they had between February, 1932 (when they had a meeting of their creditors), and October, 1932 (at which time they made an assignment for the benefit of their creditors). These assets are shown by comparing the report of Henry Brout, certified public accountant, as at February 29, 1932,

and the report of Louis P. Galenson & Company, certified public accountants, as at October 18, 1932.

Dated, December 27, 1933.

Lawyers County Trust Company, by Raymond M. Frost, Vice President.

[fol. 42] EXHIBIT "A" TO SPECIFICATIONS IN OPPOSITION TO PETITION FOR DISCHARGE

Corporation Statement

C R 2-2M-3-31.

To County Trust Company of New York:

Name: W. Reichert & Co.
Address: 15 West 37th Street, New York City.

The undersigned, for the purpose of procuring, establishing, extending, or renewing credit, and/or other accommodations or benefits which may be requested, direct or otherwise, from time to time, from County Trust Company of New York, hereby furnishes the following statement and information, which is represented and warranted as being a true and correct statement of the financial condition of the undersigned, including all liabilities, direct and contingent, on the 31st day of December, 1930, and which you are authorized to consider as continuing as a true and correct statement of the financial condition of the undersigned until another statement in writing shall be substituted for this statement.

The undersigned is engaged in the business of Impts. & Mfrs. of Jewelry at 15 West 37th St., trading under the name of W. Reichert & Co., and keeps regular books of account of said business, including ledger, journal, cash book, check book and ——. (Cross out any of books mentioned not a part of your business records).

In consideration of your granting such credit and any other accommodation or benefit to the undersigned, it is agreed that if at any time the undersigned stops payment or becomes insolvent, or commits an act of bankruptcy, or if at any time a receiver of the property of the undersigned [fol. 43] is appointed, or if any of the representations made herein or below prove to be untrue, or if any of the accounts or assets of the undersigned are transferred or

encumbered, or if execution be issued on any judgment obtained against the undersigned, or if default be made by the undersigned upon any obligations, direct or indirect, to County Trust Company of New York, or in the event of it appearing at any time that any change has occurred in the financial condition of the undersigned, which, in your opinion, you deem materially affects the ability of the undersigned, to pay all claims and demands against the undersigned, or in the event of the dissolution of the undersigned, then all obligations, direct or indirect, held by you shall immediately become due and payable without demand or notice, irrespective of the due dates of such obligations or however arising, and the same may be charged against the balance of any deposit account kept by the undersigned with you, the undersigned hereby agreeing that the said Trust Company shall have a continuing lien against the balance of any said deposit account and/or any other moneys and/or personal property the undersigned may have in said Trust Company.

Assets

Cash on hand	5,635.60
Cash in County Trust Co. of New York	
Cash in other Banks or Trust Companies	
Due from Customers:	
Accts. Receivable (Good—not pledged)	117,389.13
Notes Receivable (Good—cost or market lower)	749.72
Mdse. Finished (Valued how ——)	
" Unfinished (Valued how ——)	57,910.90
" Raw (Valued how ——)	
Listed Bonds and Stocks	
U. S. Government Securities	
Total current assets	$181,685.35
[fol. 44] Due from Officers, Directors, Employees and Stockholders	
Due from Controlled or Allied Concerns:	
For Merchandise Sold	
For Advances made	
Machinery and Equipment	
Furniture and Fixtures	8,955.81

Store Supplies, etc.	
Deferred Charges	
Investments in Affiliations	
Land and Buildings (see other side)	
Good Will	
Patents	
Advances to salesmen on comm. accounts	9,081.78
Other Investments or assets	
Final total	$199,722.94

Liabilities

Notes Payable to County Trust Co. of New York	25,000.00
" " to other Banks or Trust Companies	
" " for Paper Sold	
" " for Merchandise	
" " for Machinery & Equipment	
Accounts Payable for Merchandise	53,724.09
" " for other Purposes	
Trade Acceptances Given	
Due to Officers, Directors, Employees and Stockholders	
Due to Affiliations	
Money Deposited with this Company	
Total current debts	$ 78,724.09
Mortgage Debt:	
Due	
Bonded Debt:	
Due	
Interest Rate	
Lien on What Assets	
Reserve for Depreciation of Plant and Equipment	4,162.05
Other Reserves	
Other Liabilities	
Total Liabilities	$ 82,886.14
Capital Stock, Preferred	
Net Worth	116,836.80

Capital Stock, Common		
Surplus and Undivided Profits		
Final total		$199,722.94

[fol. 45] Profit and Loss Account

Period from 12/31/29 to 12/31/30.

Sales	$390,333.86	
Less Cost of Mdse. and Sales	234,705.21	
Trading Profit		$155,628.65
Other Income		
Total Net Income		$155,628.65
Operat. Exp., Salaries, etc.	$150,752.59	
Officers' Salaries		
Fixed Charges incl. taxes		
Deductions for Bad Accts.		
Deductions for Depreciation of Plant Equipment		
Other Deductions		
Total Deductions		150,752.59
Net profit		$ 4,876.06
Net Worth as of last Statement	$116,779.36	
Adjustments*	4,818.62	
Net Worth as of this Statement		$111,960.54
Net profit (see above)		4,876.06
Total		$116,836.60
Less Dividends Paid		
Surplus as of this Statement		

* If adjustments involve important amounts, please give details below:

12,778.62 Partner's drawings during 1930
7,960.00 Partner's loans deducted

4,818.62 adjustment in capital.

Contingent Liabilities

Were you contingently liable on statement date?	$3,905.04
	Amount
1. For customers' papers discounted?	$3,905.04
2. For Endorsement or Guarantee?	None
3. For unused balances of Letters of Credit?	
4. Under contracts for merchandise purchased for future delivery?	
(How do such contract prices compare with present market?)	
5. By reason of any other claim or demand?	

[fol. 46] Losses by bad debts during previous year, $6776, taken care of by reserves.

Have you at the present time or during the past year pledged any accounts receivable or other assets as collateral for money borrowed or otherwise; if so, state amount and explain fully? No.

Are all accounts and bills receivable for merchandise sales? Yes.

Amount of insurance carried on: 1. Merchandise, $41,000. 2. Machinery and fixtures, ——. 3. Bldg., ——.

Amount of Life Insurance, ——. Beneficiary, ——.

Do you exchange paper or endorse for anybody? ——. Amounts of notes and accounts receivable past due, ——. Is there any suit or litigation pending against you? ——.

Have you an interest in any other firm or corporation? No. State location of such concern and nature and extent of interest in it. ——.

Do you place commercial paper through brokers (name)? No.

Are your books audited by a Certified Public Accountant? Yes. Who? Nathan Lobell & Co., 11 W. 42.

Was this Statement prepared by C. P. A.? Yes.

[fol. 47] Please give full details below of all real estate owned by you, specifying amount of first, second or other mortgages:

Location: ——.
Description of property: ——.
Yearly rents: ——.
Cost: ——.
Present market value: ——.

Mtg's: ——.
Due & rate: ——.
Held by: ——.
Net equity: ——.

Date submitted Feb. 20, 1931.

Have you had any serious losses through bad debts, inventory depreciation or otherwise between date of within inventory and present time? If so, please itemize. No.

(Signed) W. Reichert & Co. Wm. Reichert, Paul Kollmar, per ——.

To County Trust Company of New York:

We submit herewith Bank and Commercial references:

Present Bank Accounts	Address	Line
Manufacturers Trust Co.	5th & 43rd St., N. Y. City	15,000
Times Square Trust Co.	7th Ave. 40th St.	25,000-10,000

Former Bank Accounts	Address	Line
Pacific Bank	28th St.	

[fol. 48]

References	Address	Credit extended
Lassner & Bamberger, Inc.	10 W. 47th	$5,000.00
Frank L. Wilmarth Co.	Providence, R. I.	
Columbia Jewelry Co.	North Cambridge, Mass.	

Requirements

Forster Chain Corp.	Irvington, N. J.
Progressive Ring Co.	Providence, R. I.
Sussfield & Cie	Paris 21 rue del 'Echiquir

Date February 20th, 1931.

(Signed) W. Reichert & Co., Wm. Reichert, Paul Kollmar.

Duly sworn to by Raymond M. Frost. Jurat omitted in printing.

[fol. 49] In United States District Court, Southern District of New York

In the Matter of W. Reichert & Co., Bankrupt.

In Bankruptcy

No. 56603

Minutes of Hearings Before Referee

Before Harold P. Coffin, Esq., Referee in Bankruptcy,
217 Broadway

New York, September 25, 1933,
11:30 o'clock, A. M.

First meeting of creditors proceeded pursuant to notice.

Appearances

Mr. Morris H. Horowitz, Attorney for Petitioning Creditors.

Mr. Saul S. Myers, Attorney for County Trust Co., Creditor, by Mr. Joseph Guerin, of Counsel.

Messrs. Goldman & Frier, Attorneys for Creditors, by Mr. Slater, of Counsel.

Mr. Meyer Marlow, Attorney for Bankrupt, by Mr. Stanley M. Dorman, of Counsel.

[fol. 50] Mr. Paul Kollmar, Bankrupt.

Mr. William Reichert, Bankrupt.

Mr. Robert M. Falkenau, Attorney for Creditor.

Messrs. Frank, Weil & Strouse, Attorneys for Creditors, by Mr. Richard Kulze, of Counsel.

Colloquy

The Referee: Was there a receiver here?

Mr. Slater: No receiver was appointed. There was an assignee under the State Court, Mr. Elmer Levenson, who proceeded to liquidate the assets and sell all the physical assets, and he collected practically all of the accounts receivable. I believe there is a balance in his hands of five or six thousand dollars at this time. The only assets remaining uncollected are some of the accounts receivable.

The Referee: Do the bankrupts appear this morning?

Mr. Marlow: Both of them.

The Referee: Have the bankrupts filed schedules?

Mr. Marlow: No.

The Referee: How soon will the bankrupts file schedules?

Mr. Marlow: I think as soon as we can get the books, as soon as they will be available for us, and also a report of the assignee, and so forth.

The Referee: How long do you desire to have?

Mr. Marlow: About ten days.

The Referee: The bankrupts are directed to file schedules with the clerk of the court on or about October 9th.

[fol. 51] The Referee: Do you understand the direction of the Referee with respect to the filing of schedules?

(Both the bankrupts responded in the affirmative.)

The Referee: Is it necessary to have a trustee in this matter?

Mr. Slater: Yes, of course, I think there will be some dispute. We represent about 19 creditors, with claims amounting to $2,921, and I nominate Louis Horowitz, 15 Maiden Lane.

Mr. Morris H. Horowitz: I represent three creditors, with claims totalling $7,000, and we nominate the Irving Trust Company.

(Colloquy off the record.)

The Referee: I have five claims, five claims filed by creditors who have given me power of attorney.

Mr. Guerin: I represent two claims—two other claims, totalling another $2,000 and I vote for the Irving Trust Company as Trustee.

Mr. Falkenau: I represent the Manufacturers Trust Company with a claim of $4,545.76, but I understand the claim is not filed. We would vote for the Irving Trust Company.

The Referee: Is it an unliquidated claim?

Mr. Falkenau: Yes.

The Referee: It appears that the creditors have failed to elect a trustee, and I appoint the Irving Trust Company trustee and fix the bond in the sum of $100.00.

Paul Kollmar and William Reichert, the bankrupts, were thereupon duly sworn by the Referee.

The Referee: What do you propose to do with this meeting?

[fol. 52] Mr. Guerin: I ask that it be adjourned until after the filing of the schedules.

The Referee: I will adjourn this hearing to October 18, 1933, at 2:30 P. M.

Meeting adjourned to Oct. 18, 1933, at 2:30 P. M.

[Title omitted]

Before Harold P. Coffin, Referee in Bankruptcy,
217 Broadway

New York, N. Y., December 11th, 1933,
2:30 o'clock P. M.

Adjourned first meeting of creditors proceeded pursuant to adjournment.

APPEARANCES

Henry M. Stevenson, Esq., Attorney for Trustee.

Meyer Marlow, Esq., Attorney for the Bankrupt, by George Cohen, Esq., of Counsel.

Saul S. Myers, Esq., Attorney for Petitioning Creditors, by J. K. Guerin, Esq., of Counsel.

[fol. 53] WILLIAM REICHERT, called as a witness, having been first duly sworn by the Referee, testified as follows:

Examination.

By Mr. Stevenson:

Q. When did you and Mr. Kollmar organize your firm of W. Reichert & Company?

A. In 1920.

Q. And have you been in business continuously ever since then, up to the time of your assignment?

A. Yes.

Q. At any time has there been any other member of the firm other than you and Mr. Kollmar?

A. No.

Q. Just you two partners?

A. Yes.

Q. All during that time?
A. Yes.
Q. You never incorporated your business?
A. No.
Q. You acted entirely as partners throughout the firm partnership?
A. Yes.
Q. Were you equally interested in the partnership or not?
A. What is that?
Q. Did you have equal interests in the partnership?
A. Yes.
Q. Contributed the same amount of money?
A. Yes.
Q. And you shared the profits and losses equally?
A. Yes.
Q. You were in the jewelry business, were you not?
A. Yes.
Q. Just give me a general description of your business, or the way you ran it. Did you have a store where you sold your jewelry?
A. We had a wholesale and importing business.
[fol. 54] Q. Entirely a wholesale and importing business?
A. Yes. We would go to Europe and import merchandise, and we would go to Providence, Rhode Island, and buy merchandise there.
Q. And then you would sell it?
A. And then we would sell it to the department stores and other stores, and jewelry stores.
Q. At the time of your assignment—what is the exact date of the assignment, by the way? Have you got that?
A. October 19th, I think.
Q. October 19th, 1932; is that right?
A. Yes.
Q. At the time you made the assignment, where did you have your firm bank accounts?
A. In the County Trust Company and the Manufacturers Trust Company.
Q. And how long a time had you had your accounts in those two banks?
A. I think the Manufacturers, since 1929, and ever since February, 1931, in the County Trust Company.

Q. And back of that you had your accounts elsewhere, did you? Back of 1929?

A. Back of 1929, we had an account in the Times Square Trust Company.

Q. I see by the accountant's report that there were two loans made to your company by Mr. Saul Arons; one was on the 15th of June, 1932, for $600, and one was on the 27th of June, 1932, for $500. Were those cash advances made of those funds?

A. Those were cash advances, yes.

Q. And will your bank account show the deposits of those sums on those dates?

A. Yes.

Q. Did you give Mr. Arons any notes for those advances?

A. Yes, I gave him notes.

Q. Had you had some considerable business transactions with him before the loans were made?

A. For quite some time, yes.

[fol. 55] Q. Had he been a customer?

A. No, he used to collect accounts for us.

Q. And at the same time, you assigned certain accounts to Mr. Arons as collateral security for the loans?

A. Yes.

Q. Have you that document—the written assignment—in your possession, or has it been turned over to the assignee?

A. It has been turned over to the assignee. I have not got that.

Q. From those accounts certain collections have been made?

A. Yes, I think so.

Q. And there are still outstanding some other collections?

A. That you would have to ask Mr. Arons, I think.

Q. You also executed an assignment to your attorney, Mr. Meyer Marlow, in payment of a bill that he had rendered for professional services; is that true?

A. That is correct.

Q. Have you any statement from Mr. Marlow as to what services he rendered?

A. That was also turned over to the assignee. They took it when they took over everything.

Q. It appears that your wife made the following advances to your firm: On July 31, 1930, $560; on September

30, 1930, $1,000; on October 31, 1931, $1,000; and on October 14th, 1931, $1,000; making a total of $3,560, as against which there has been one payment of $60, leaving an apparent balance of some $3,500. Did your wife advance that money by check?

A. That was advanced by cash.

Q. In cash?

A. All paid in. The books will show all that was paid in.

Q. Was it deposited in cash in your bank?

A. It was deposited in the bank on those days.

Q. Can you give any explanation as to why your wife [fol. 56] advanced that money in cash rather than by check?

A. Yes, because I got it from the savings bank.

Q. Didn't she have any checking account?

A. No, she had no checking account.

Q. Can you give me the name or names of the saving banks from which you drew?

A. Bowery Savings Bank.

Q. Were all of the withdrawals made from that bank, the Bowery Savings Bank?

A. Yes.

Q. What is the location of that bank?

A. 42nd Street.

Q. So, the records of that bank, and your wife's account with that bank, will show those withdrawals?

A. Oh, yes.

Q. It appears from the books that you had a salesman by the name of Louis Friml, to whom it appears you made advances on unearned commissions, as I understand it?

A. Yes.

Q. Which amounts to $3,332.98. Can you tell me how long Mr. Friml was with you before you made your assignments?

A. He came—he entered our employ on January 1, 1931.

Q. Just what arrangement did you have with Mr. Friml as to his compensation?

A. He got a weekly drawing account, and a certain amount while he was on the road.

Q. What was the amount of his weekly drawing account?

A. As far as I can remember, I think it was $25, and while he was on the road.

Q. $25 a week?

A. And $75, while he was on the road additional.

Q. Those advances were made to him against whatever commissions he should earn, were they not?

A. Yes.

Q. And did you have any agreement with him as to [fol. 57] whether or not he would refund any unearned advances?

A. He owed us the money, as far as that is concerned. He was supposed to make it in commissions. He received 12½ per cent. commissions on all his sales.

Q. Well, assuming that he did not make as much as whatever you paid him, was he supposed to refund any advances that had been made him on account?

A. There was no agreement about it. There was nothing said that he didn't owe it to us. It was not said that he did not owe it to us any more.

Q. Did you make a settlement with Mr. Friml from time to time on account of his commissions?

A. Did I what?

Q. Did you settle his account? Did you have a settlement with him once in a while?

A. Well, it was simply he got a statement every month.

Q. Every month?

A. Yes.

Q. You would render him a statement once a month?

A. Yes.

Q. Showing the advances that you had made?

A. Yes.

Q. And showing the amounts of commissions that he had earned?

A. That is right.

Q. Have you any record in your office of those statements?

A. It ought to be there.

Q. You will be able to get them, will you not?

A. I have nothing more. I have none of the papers.

Q. They are in the hands of the assignee?

A. He took over the assets. I have nothing.

Q. I see, by examining the accountant's statement, that for the year that ended December 31, 1931, the gross profits on sales was $46,945.83, and the commissions to salesmen was $35,226.47. Is it not a fact that all earned commissions [fol. 58] on the $46,945.83 of sales were fully paid?

A. I don't quite catch that.

(Discussion off the record.)

Q. Did Mr. Friml stay with you until you made your assignment in October, 1932?

A. No, he left in February, 1932.

Q. In February, 1932?

A. Yes.

Q. So, he was with you for a year and two months?

A. For a year and two months, yes.

Q. Are you able to tell me approximately how much time he was on the road, drawing at the rate of $100 a week, as distinguished from being here and drawing at the rate of $25?

A. He was there about 38 weeks; roughly, about 38 weeks.

Q. He was on the road?

A. He was on the road. I would say that he was on the road approximately 38 weeks out of 52, and approximately 14 weeks at home.

Q. Yes; but I am talking about the next year. He was there two months more? About the same ratio?

A. During 1931? During the eight weeks of 1932, he was out practically all the time.

Q. Have you any idea how much Mr. Friml earned in commissions during that period?

A. I would have to look back to see how much he sold. That can be easily checked up.

Q. Now, take Mr. Jack Fried, another salesman to whom you made advances?

A. Yes.

Q. It appears that your advances to Mr. Fried amounted in the aggregate to $4,743.02. How long was Mr. Fried with you?

A. He was with us before, and then we took him back later on in, I think it was, 1929.

[fol. 59] Q. Well, you settled with him. This was for the later period?

A. Yes, for the later period. He had been with us at some earlier period. He had left and then come back. All of the advances were paid him during the period after his return.

Q. About when did he come back?

A. He also gave up—in February, 1932, he gave up our line. He returned to our employ sometime in the summer of—probably, July, 1929.

Q. But he stayed with you up to when?

A. He carried our line until the end of February, 1932.

Q. So that these advances were all made to him during that period; that is, from in or about July, 1929, to the end of February, 1932; is that correct?

A. Yes.

Q. And during that time, what was your arrangement with Mr. Fried?

A. In the beginning, he got 15 per cent. commission, and later on he had 12½ per cent. commission, and we advanced him $125 a week while out on the road, and either $40 or $50 a week while he was home. I am not quite sure. Either $40 or $50.

Q. And did he get similar statements every month?

A. Every month he got a statement.

Q. And therefore, there will be statements during that period of his employ, that will show the advances paid to him on account of commissions that he earned?

A. Yes.

Q. You also appear to have had with you a salesman to whom you made advances, whose name was William Reissman. Tell us what the period of his employment with your firm was.

A. It may be about ten years. William Reissman had been with us some years up to the time of our failure. The period, however, that was covered by a drawing account [fol. 60] arrangement was from probably January 1st, 1928 up to September, 1932. During that time he did not go on the road at all. Reissman only went on the road occasionally. For the most part he was in or around New York City. During that period he had a drawing account at the rate of $40. During the comparatively short period when he was on the road he had a drawing account at the rate of about $65.

Q. What arrangement did you have with a salesman whose name is Joe Stadtman?

A. He covered the New England territory, and covered the greater part of New York.

Q. Was he on the road most of the time?

A. Stadtman was on the road most of the time. I may have been confused in giving some of my answers regard-

ing the compensation of these salesmen. Friml was paid at the rate of $25 a week when he was in New York, and $105 a week when he was on the road. Fried was paid at the rate of $40 a week when he was in New York, and $165 a week when he was on the road. Reissman was paid at the rate of $40 a week when he was in New York City, and $65 a week when he was on the road. Stadtman got $40 a week when he was in New York, and $120 a week when he was on the road. All of these salesmen paid their expenses out of the extra compensation they got when they were on the road, and we did not reimburse them for those expenses. Our monthly statements of account with all of these men will show the amount paid them each week and the amounts of commissions which they earned in each week.

Q. Have you any property of your own as distinguished [fol. 61] from the interest you had in this firm?

A. No, nothing whatsoever.

Q. How much money did you put in the firm when you went into it?

A. 1903, I had about $10,000.

Q. And did you make contributions from time to time, to the business?

A. The business made it. It came out of the business.

Q. Not only that, but isn't it a fact that the business made a very handsome profit for a good many years?

A. It did.

Q. When you went into this business you had other property than $10,000 that you contributed, didn't you?

A. No, nothing else.

Q. Didn't have anything else in the world?

A. No, nothing else.

Q. Everything you had you put in it?

A. Everything I had I put in it.

Q. Have you at any time in your life owned any real estate?

A. No.

Q. When were you married, Mr. Reichert?

A. 1912.

Q. Have you any children?

A. Two boys.

Q. Are they grown up at present?

A. One boy was 21 in September, and the other boy was 16 in June.

Q. Your wife is still living, I take it.

A. Yes.

Q. Where did you live during the period of this partnership? Where were you living when you went into the partnership?

A. I lived first in Brooklyn, and then in Mamaroneck.

Q. Do you now live in Mamaroneck?

A. I live in Mamaroneck now.

Q. And the same apartment or the same house you have had for some time?

A. Yes.

Q. Is it a house or an apartment?

A. A house. Since 1923, I have lived there.

[fol. 62] Q. And have you rented the house or did you buy it?

A. We bought the house.

Q. In 1923?

A. Yes.

Q. Did you pay for it?

A. Mrs. Reichert paid for it.

Q. Did she have means of her own independent of yours?

A. Yes.

Q. From money that you gave her?

A. From money that I gave her, and money that she had of her own.

Q. And she took title to the house at the time you bought it?

A. Yes.

Q. And it has been in her name ever since?

A. Ever since.

Q. Any mortgage on the house?

A. Yes.

Q. When was the mortgage put on it?

A. At the time of the purchase.

Q. Can you tell me what she paid for the house, and how much mortgage it has on it?

A. She paid $22,500, and the mortgage is $8,000.

Q. And it has continued ever since just the same?

A. Yes. The mortgage originally was higher, but we paid some of it off, and the mortgage is $8,000.

Q. The mortgage, when she bought the house was more than that, but it has been reduced from time to time?

A. Yes.

Q. Were you not able to save quite a substantial amount during the more prosperous years of your partnership?

A. I always left the money in the business, outside of what she had—what we drew out. We didn't draw any money out of the business. We left it in the business to make the business grow up.

Q. You and Mr. Kollmar had the same drawing account?

A. Yes.

[fol. 63] Q. How would you draw, by the week or by the month?

A. Well, by the week. Sometimes we did not have enough, but when we could do it, we always did it by the week.

Q. And without exception, yours and Mr. Kollmar's withdrawals were identical?

A. Yes, they were identical.

Q. How much a week would you ordinarily draw out?

A. Sometimes $50, and when times got better, $50 to $100, and when times got very good, $200, and then we would come down again. When we came down again, we took out about $50 or $60.

Q. And you were unable to continue in business, were you, after 1932?

A. Yes.

Q. You made your weekly withdrawals right up to the last, I suppose, in some amount or other?

A. Yes.

Q. What was the lowest figure that you reached at the end?

A. About $60 a week.

Q. And then, at the end you made an assignment?

A. Yes. I want to correct my testimony to the effect that Mr. Kollmar and I started the business by each contributing $10,000.00. I started this business by myself in 1903. Mr. Kollmar came to me as a salesman in 1905. On January 1, 1920, I took Mr. Kollmar in with me as a partner. At the beginning, in 1903, I had about $10,000. That I put into my business. On the 1st of January, 1920, I had substantially more than that in cash in my business—cash and stock in my business. Mr. Kollmar didn't make any contribution of cash to the business at the time I took him in partnership. I wanted him to stay with me, because

I looked upon him as a desirable partner and did not want [fol. 64] him to go out and start any competition. But he did not invest any cash in the business, and never has invested any. From the time he went into the firm with me, he and I shared the profits together. At no time did Mr. Kollmar and I divide lump sums as profits in the business. We drew week by week what we thought the business warranted our withdrawing, and that continued up to the very end.

Paul Kollmar, called as a witness, having been first duly sworn by the Referee, testified as follows:

Examination.

By Mr. Stevenson:

Q. You have listened to all the testimony that Mr. Riechert has given, Mr. Kollmar?

A. Yes.

Q. Is your recollection exactly the same as Mr. Reichert's as to all the matters as to which he has testified?

A. Yes.

Q. So that you know, do you, that his statements are without exception, entirely true, so far as they relate to the business.

A. Yes.

Q. I am excluding the questions about his wife, and so forth?

A. Yes.

Q. It appears that your father-in-law, Mr. Ponsky loaned the firm $3,000 on June 30th, 1930?

A. Yes.

Q. And against that loan payments were made as follows: On December 11th, 1930, $100; on December 19th, 1930, $2,000; and that left a balance of $900?

A. Yes.

[fol. 65] Q. Was that money advanced to the firm in cash or by Mr. Ponsky's check?

A. I think it was in cash.

Q. Have you any explanation to make as to why it was advanced that way, rather than by check?

A. My father-in-law took it out of the savings bank.

Q. What savings bank did he take it out of?

A. Either the Bowery or the Greenwich Street Bank.

Q. What is his full name?

A. Morris Ponsky.

Q. Is he still alive?

A. He is.

Q. And there is still unpaid, is there, a balance of $900, to Mr. Ponsky?

A. Yes.

Q. It also appears that Mrs. Kollmar advanced the firm $3,000, and I do not find in the accountant's report a statement of the date when that advance was made. Can you supply the date? Tell me about when it was, so that we can check it up later on?

A. (No answer.)

Q. If you are not able to state, you can find it by an examination of your records or ledgers, can't you?

A. Yes.

Q. Do you know whether it was paid by check or by cash?

A. I think it was paid by cash.

Q. Did your wife also have a savings bank account?

A. Yes.

Q. And was this withdrawn from her savings bank account?

A. Yes.

Q. And what was the name of the savings bank account?

A. Bowery Savings Bank.

Q. The same as the bank where Mrs. Reichert had her bank account?

A. Yes.

Q. So, your wife's bank account will show the withdrawal of that money?

A. Yes.

Q. And that was deposited—that and your father-in-[fol. 66] law's loan likewise were deposited in your firm bank account, were they not?

A. Yes.

Q. So that all those transactions will show by their bank accounts and their savings bank accounts?

A. Yes.

Q. Mr. Kollmar, did you put the same amount of money into this firm that your partner, Mr. Reichert, put in?

A. No.

Q. Mr. Kollmar, when you first went in with Mr. Reichert as a salesman, in 1905, how old a man were you?

A. I was twenty years old.

Q. So that now you are a man of 48?

A. About 50.

Q. I don't care how old you are, I just want to get a kind of a picture of this.

A. Yes.

Q. You are several years younger than Mr. Reichert?

A. Yes.

Q. Had you any property of your own when you went in with Mr. Reichert?

A. No, sir.

Q. When were you married, Mr. Kollmar?

A. I was married in 1921.

Q. And where did you live at that time or after you were married?

A. New York City.

Q. Have you lived here ever since?

A. No, I lived once in New Rochelle.

Q. You are living in New Rochelle now?

A. No, I am living in the city again.

Q. Have you ever owned any real estate?

A. I have not.

Q. Have you at this time any property of any kind?

A. No property, no.

(Adjourned to December 14th, 1933, at 2:30 P. M.)

[fol. 67] [Title omitted]

Before Harold P. Coffin, Esq., Referee in Bankruptcy, 217 Broadway

New York, December 14, 1933,
2.30 o'clock P. M.

Adjourned first meeting of creditors.
Proceeded pursuant to adjournment.

APPEARANCES

Mr. Henry M. Stevenson, Attorney for Trustee.
Mr. Meyer Marlow, Attorney for Bankrupt.

Mr. Saul S. Myers, Attorney for Petitioning Creditors, by Mr. Joseph K. Guerin, of Counsel.

WILLIAM REICHERT, recalled.

By Mr. Stevenson:

Q. Now, as I understand it, Mr. Reichert, your wife made three loans, or, rather, made four loans, one on July 31, [fol. 68] 31, 1930, for $560.00, one on September 30th for $1,000, one on October 31, 1930, for $1,000, and the last one on October 14, 1931, for $1,000, or a total of $3,560; and the only payment that has ever been made on these loans is one payment made on June 16th for $60.00?

A. Yes.

Q. It is also a fact, as I understand it, that Mrs. Kollmar made a loan of $3,000, the date of which I don't find which loan must have been made prior to either one of those two payments, one payment made on January 14, 1931, for $300.00 and another payment on January 24, 1931, for $100.00?

A. (No answer.)

Q. Was the $3,000 loan before that date would you say?

A. (No answer.)

Q. Did your wife put in $3,000 about the same date?

A. (No answer.)

Mr. Stevens: I will put it this way.

Q. It appears from the paper before me that Mrs. Kollmar made a loan of $3,000; the date when the loan was made is not stated in this paper but it appears that there were two payments made against this loan, one on January 14, 1931, for $300.00 and one on the 24th of January, 1931, for $100.00; are you certain that the $3,000 loan had been made before either one of those payments had been made?

A. Yes.

Q. So, that left a balance after the payments had been made of $2600?

A. Yes.

Q. And no part of that has ever been paid?

A. No.

Q. Mr. Ponsky, the father-in-law of Mr. Kollmar, also made a loan on the 30th of June, 1930, for $3,000?

A. Yes.

[fol. 69] Q. As against which two payments were made, one on the 11th of December, 1932, for $100.00, and one on the 19th of December, 1932, for $2,000?

A. Yes.

Q. Making a total of $2100 and leaving a balance after those payments had been made of $900.00?

A. Yes.

Q. And no payment has ever been made on account of that?

A. No.

(Colloquy off the record.)

Mr. Stevenson: The examination of the witness was interrupted at the request of the attorney for the bankrupt, in order that Mr. Kollmar might make a statement in the nature of a correction of the testimony given by him at the last hearing. Do you wish to make a correction, Mr. Kollmar?

Mr. Kollmar: Yes.

Mr. Stevenson: You may state the correction you wish to make.

Mr. Kollmar: I am not quite sure whether the complete amount was drawn out of the savings bank.

Mr. Stevenson: What complete amount?

Mr. Kollmar: Of the loan.

Mr. Stevenson: From your wife?

Mr. Kollmar: Was payment out of the savings bank. I think she received a check from California around that time, which she might have used in part.

Mr. Stevenson: The savings bank records would disclose that?

Mr. Kollmar: Yes.

[fol. 70] Mr. Stevenson: Mr. Reichert also stated that he desired to make a correction in the testimony which he had given at the last hearing. What is the correction you wish to make, Mr. Reichert?

Mr. Reichert: I believe I said that the whole amount was taken out.

Mr. Stevenson: What whole amount?

Mr. Reichert: $3,560.

Mr. Stevenson: By whom?

Mr. Reichert: By Mrs. Reichert, was taken out of the savings bank, but I now find that part of it was taken out

from her private account, which she had at home, and the other from the savings bank.

Q. Mr. Reichert, do you remember your company getting a loan from the County Trust Company of $10,000 on the 20th of February, 1931?

A. Yes.

Q. And at that time you and Mr. Kollmar signed a statement stating the condition of your partnership, its assets and liabilities, for the purpose of procuring the loan, didn't you?

A. Yes.

Q. Is this the document that I now show you—is this document I now show you the paper that you signed on that occasion?

A. Yes.

Q. And after this document had been signed by you and Mr. Kollmar, the loan of $10,000 was made by the County Trust Company?

A. Yes.

Q. At that time there was an indebtedness, wasn't there, on the part of your firm to your wife, Mr. Kollmar's wife, and Mr. Kollmar's father-in-law, which aggregated $6,060?

A. Yes.

[fol. 71] Q. Is that so?

A. Yes.

Q. Where in this statement is there any statement regarding that indebtedness, aggregating $6,060?

A. That is not in here, that was capital at that time.

Q. I don't understand.

A. We intended to repay that during the year, that $6,000. We figured it as capital.

Q. I know, but you appreciate, don't you, that when people lend money they are going to be influenced by the amount of money that the persons they are lending it to owe others?

A. Yes.

Q. And don't you realize that the amount of money that you and your partner owed members of your family respectively, which were debts of the company, were liabilities that might have influenced the County Trust Company in determining whether they would lend that $10,000 or not?

A. Our accountant stated it was perfectly all right, he said, "If you consider that as a personal loan," we could figure that as part of our capital.

Q. If you figured it as part of your capital, then it could not have been a loan by members of your families. There must have been some arrangement with them whereby it was to be treated as capital of the company and not to be a loan, isn't that so?

A. We were supposed to repay that during the year.

Q. You don't answer the question. If that money was to be repaid as a loan, why doesn't it appear in here as a liability of your company?

A. Because we considered it as capital.

Q. Was it capital, not what you considered it, what was it?

A. In here it was capital.

[fol. 72] Q. When did it cease to become capital and become an indebtedness that was to be repaid?

A. At the end of that year.

Q. Who decided it?

A. We decide- it.

Q. Didn't you discuss it with the people that loaned the money?

A. No.

Q. You and your partner simply changed your minds about it and decided it was to be money owed to members of your families and would have to be repaid, is that so?

A. It seems that way.

Q. Will you tell me what you mean by this item, which I find on this sheet; you have here in the statement $12,778.60, partners drawing during 1930, and you have this item $7,960, partners' loan deducted, and subtracting one from the other, you have an item of $4,881.62, adjustment in capital, what do you mean by that?

A. This must be the loans—personal loans we mentioned before.

Q. The $7,960?

A. Yes.

(Colloquy off the record.)

Mr. Stevenson: Now I will discontinue with Mr. Reichert's examination.

PAUL KOLLMAR, recalled.

By Mr. Stevenson:

Q. You have heard the testimony that Mr. Reichert has just given?

A. Yes.

[fol. 73] Q. Regarding the $10,000 loan from the County Trust Company and regarding the statement that you both signed?

A. Yes.

Q. I show you the statement and I ask you if you recognize your signature here as well?

A. Yes.

Q. Have you any explanation to make regarding the loans by members of your family and also Mr. Reichert's family, contained in here, other than the explanation made by Mr. Reichert?

A. None at all.

Q. Have you any different explanation to make than Mr. Reichert made as to the item of $7,960, and setting that up as partners' loan deducted?

A. No.

Q. What is the answer?

A. No.

Mr. Stevenson: I want to have this sheet marked for identification.

(Paper marked Trustee's Exhibit No. 1 for Identification, Dec. 14, 1933.)

Mr. Stevenson: I am going to request Mr. Guerin to furnish a copy of the sheet.

Mr. Guerin: I will.

Q. Your house that you own in New Rochelle, or, rather, the house your wife had, when was that sold?

A. It was not sold.

Q. It was not sold?

A. No.

Q. You are not living in it now?

A. No.

Q. Is it rented?
A. Yes.
Q. How long has it been rented?
A. Since the first of October.
Q. Since the first of October?
A. Yes.
Q. How much a month is paid for the rental?
A. $135.00 a month rent. The first month there were some payments for fixing up the place.
[fol. 74] Q. It is rented at the rate of $135.00 a month?
A. Yes.
Q. Who is the rent paid to?
A. To Mrs. Kollmar.

Hearing adjourned at instance of attorney for the Trustee to December 21, 1933, at 2:30 P. M.

[Title omitted]

Before Harold P. Coffin, Esq., Referee in Bankruptcy, 217 Broadway

New York, December 21, 1933,
2:30 o'clock, P. M.

Adjourned first meeting of creditors proceeded pursuant to adjournment.

APPEARANCES

Mr. Henry M. Stevenson, Attorney for Trustee.
Mr. Saul S. Myers, Attorney for Petitioning Creditors, by Mr. Joseph K. Guerin, of counsel.
[fol. 75] Mr. Meyer Marlow, Attorney for Bankrupt, by Mr. Cohen, of Counsel.
Mr. William Reichert, Bankrupt.
Mr. Paul Kollmar, Bankrupt.

COLLOQUY

Mr. Stevenson: I have been informed since the last hearing by counsel for the bankrupt that they desire to make a statement in the nature of corrections; that is, corrections

as to the testimony which they have before given, and I now invite them to make whatever statement they wish to make in that connection.

Mr. Reichert: I wish to make the following statement for the purpose of clar-fying and amending the testimony given at the last hearing, in reference to certain loans made by relatives of myself.

In 1930, Mrs. Reichert lent me certain moneys which I, in turn, gave to the business immediately. This loan was made to me and not to the partnership but I presume that since the money was immediately put into the business, the bookkeeper, without having asked me as to the method of entry of these loans, made up certain loan accounts showing these loans to have been made to the partnership itself.

When the financial statement of December, 1930, was made up, Mr. Kollmar, and myself told the accountant, upon his inquiry, that such loans as were from relatives, were not actual loans payable of the partnership, but were loans to the partners who in turn had given them to the partner-[fol. 76] ship as additional contributions to capital. The accountant did not list these loans from relatives, therefore, as partnership liabilities upon the balance sheet, but showed these loans in the adjustment of capital as a deduction from partners' drawings during 1930 in the sum of $12,778.62. The "partners' drawings" then represents the $6,000. annual drawings for each partner plus some traveling expenses, this item being a decrease in capital. The $7,960., partners' loans deducted item, represents the additional contributions to capital, made by both Mr. Kollmar and myself, by means of these loans from relatives.

At the time the schedules were made up, we did not know that there was any distinction made between partnership and individual creditors and, therefore, did not explain to our attorney that these loans from relations were individual debts and not partnership debts. We have been informed by our attorney of this error and will amend the schedules accordingly.

Mr. Stevenson: Do you, Mr. Kollmar, want to make a statement?

Mr. Kollmar: I wish to make a similar statement in reference to loans made by Mrs. Reichert, Mrs. Kollmar and Mr. Ponsky.

Mr. Cohen: I wish to submit withdrawals of claims of Mrs. Reichert and Mrs. Kollmar, which claims were filed as against the partnership estate. Mrs. Reichert and Mrs. Kollmar submit these claims merely against the individual bankrupts and not as against the partnership.

Mr. Ponsky, the father-in-law of Mr. Kollmar, who is a claimant in the sum of $900.00 against the partnership estate, will file a similar consent of withdrawal as soon [fol. 77] as he is able to do so. His inability to comply at this time is caused by serious illness.

Mr. Stevenson: I don't see the necessity at present for any further examination of the bankrupts. I will close the examination with the understanding that the bankrupts will appear for further examination.

Do you wish to ask any questions, Mr. Guerin?

Mr. Guerin: Yes.

WILLIAM REICHERT, recalled.

By Mr. Guerin:

Q. With reference to the statement that you just read into the record, Mr. Reichert, when this adjustment was made in your capital account, was it actually made on your books?

A. No, in the books it was not made because the bookkeeper did not understand the nature of the loans.

Q. What do you mean by that?

A. He did not understand that it was partners' loans. On the books it was merely entered for the record, but the bookkeeper by mistake entered it as loans, but it was loans to us only and not to the partnership.

Q. You were to look for us where this money came from?

A. Yes.

Q. Referring to Trustee's Exhibit No. 1, the financial statement submitted to the County Trust Company of Feb- [fol. 78] ruary 20, 1931, as of the 31st day of December, 1930, you were asked the question in that statement, "Was this statement prepared by a certified public accountant?" and you answered "Yes".

A. Yes.

Q. When you referred a few minutes ago to the bookkeeper did you mean the bookkeeper was a certified public accountant?

A. No, we had a certified accountant.

Q. Who was the certified accountant?

A. Mr. Lobell.

Q. And is he the man that made the entries on this statement?

A. He prepared the statement for us.

Q. Is he the man that also made the entries in the books?

A. No, he did not make the entries in the books, we had another bookkeeper.

Q. Your books were checked by Mr. Lobell?

A. Yes.

Q. And did Mr. Lobell at any time point out to you that in the statement he prepared for you he made this capital adjustment on these loans from your relatives whereas your books showed they were partnership debts to relatives?

A. I don't recall whether he actually went into every single item in the books.

(Colloquy off the record.)

(Question repeated by the stenographer.)

The Witness: He may have pointed out to the bookkeeper that adjustment should be made.

Q. Did he point it out to you?

A. He told us at that time I think, but he may have forgotten to mention it.

Q. What did he tell you?

[fol. 79] A. He said that these are partnership loans—that these are partners' loans and not partnership loans.

Q. How often did he check your books?

A. He did not check them very much in 1931. He did not go into detail in the books at all during that year.

Q. Did he ever check them after December 31, 1930?

A. He may have, I cannot recollect any more.

Q. What is your best recollection of the last time he went over your books?

A. It is so long ago I cannot tell you when he looked through the books again.

Q. Have you no recollection at all?

A. He may have come up and looked through the books—

Q. I am trying to get your recollection, not what he may have.

A. I cannot say anything definitely.

Q. You have no recollection at all as to the last time he checked your books?

A. No, I have not.

Q. After he told that to you do you remember whether or not you told your accountant or your bookkeeper?

A. I may have told the bookkeeper, it is possible.

Q. What is your recollection, did you or did you not?

A. I may have told the bookkeeper, but the bookkeeper may have left it out not thinking it was very important.

Q. I want to get away from the words "may have," I want your best recollection as to whether you did?

A. I think I did tell the bookkeeper, but I don't know whether she did not forget it. I think I told her to do it.

Q. It is your best recollection that you did?

A. That is my best recollection.

[fol. 80] Q. Do you remember giving any other financial statement after this one?

A. I think we gave one in 1931—the end of 1931.

Q. Do you know what that statement showed as to these particular items?

A. I don't know exactly, have you got it there?

Mr. Guerin: I offer this paper in evidence.

(Paper received in evidence and marked Petitioning Creditors' Exhibit No. 1, Dec. 21, 1933.)

Q. Will you look at that and see what that statement shows as to this particular item of loans of partners' relatives?

A. This is an error and should have been left out, it is an absolute mistake, it should have been left out. It is a mistake.

Q. You signed that statement?

A. We made a mistake in putting this liability in.

Q. I show you a letter of February 10, 1932, from William Reichert & Company to the County Trust Company of New York, and I ask you whether that is your signature on that letter?

A. Yes.

Q. And, having looked at that letter, will you state about when the financial statement as of December 31, 1931, was signed by you?

A. I don't know more than when it was signed.

Q. Looking at the letter, when would you say you signed it?

A. Maybe at the same time and maybe afterward and maybe before, that I cannot tell you.

Q. That letter encloses this statement to the County Trust Company?

A. Yes.

[fol. 81] Q. You recall that?

A. Possibly, I don't recollect it.

Q. Having read the letter, does the letter refresh your recollection that the statement went with that letter?

A. Well, of course, as it says here, it must have been sent at the same time.

Q. Having your recollection refreshed to that extent, when approximately would you say that the financial statement was signed by you?

A. It must have been signed at the same time as the letter was written.

Q. That is, on or around February, 1932, is that right?

A. Yes.

Q. How do you explain that the statement as of December 31, 1932, contains the entry of loans payable (partners' relatives), $7,960, if a year before that your certified public accountant had called to your attention that they were not loans to the partnership but individual loans?

A. There was no doubt a mistake on the part of the bookkeeper and it was overlooked to be corrected.

Q. But you signed the statement?

A. I signed the statement, yes.

Q. And did you check these items before you signed?

A. We looked through the thing, but that amount was on the books as a matter of record.

Q. I just want to get from you now your explanation of how you signed this statement one year after Mr. Lobell had called to your attention that this item was really a capital adjustment item and was not an indebtedness from the partnership to the partners' relatives?

A. It would have been better for us if the item would have been left out, it would have been.

[fol. 82] Q. You don't answer the question, I want to know how you explain that you permitted it to stay in?

A. We evidently did not grasp and we were not experienced enough to understand the difference between loans to us and loans to the partnership, and that is the only explanation I can make. There was nothing wrong intentionally.

Q. Was the original adjustment shown on the statement of February 10, 1931, as of December 31, 1930, made at the suggestion of the County Trust Company?

A. No, oh, no, they never said anything to us.

Q. Did the County Trust Company ever tell you that before they would make the loan to you on February 20, 1931, that your books would have to be adjusted so that there was no indebtedness from the partnership to the partners' relatives?

A. There was never anything mentioned on the part of the County Trust Company or anybody from the County Trust Company that referred to any part of the statement, neither this part or any other part.

Q. Did Mr. Lobell tell you at that time that the statement that you were giving the County Trust Company should show that the money received from partners' relatives should be put into the capital account and not carried on the loan account?

A. I don't recollect. I think we thought perhaps we could wipe out these loans through our drawings in the course of the year.

Q. Was it you that suggested it to Mr. Lobell?

A. No, I did not suggest anything.

Q. I want to get now where did the suggestion come from as to the manner that this item should take—at least, the form that this item should take on the financial state-

[fol. 83] ment submitted to the County Trust Company?

A. (No answer.)

Mr. Guerin: Do you understand the question?

(Question repeated by the stenographer.)

The Witness: I don't remember.

Q. Was it your suggestion?

A. Suggestion of what?

Q. That this item of $7,960 should appear as capital adjustment and not as a loan due to relatives of the partners?

A. I cannot remember any more who made the suggestion.

Q. Have you no recollection at all?

A. I have no recollection whatsoever.

Q. Do you remember whether or not it was your suggestion?

A. If I have no recollection, I cannot say either way. I don't remember it.

Q. Did you suggest it?

A. I say, I don't remember it.

Q. Do you remember whether or not Mr. Kollmar suggested it?

A. I don't remember, that is three years ago.

Q. Do you remember whether or not Mr. Lobell suggested it?

A. We may have all talked it over or nobody may have talked it over, I don't remember it.

Q. Do you remember whether or not the representative of the County Trust Company——

A. The County Trust Company never said anything regarding our statement. It never made any remarks about our statement.

Q. For how long a period of time has Mr. Lobell been your accountant?

A. Oh, for six or seven years, maybe longer.

[fol. 84] Q. This money, as I understand it, that you borrowed from your wife, Mr. Kollmar's wife and his father-in-law, was received at various times during the year 1930, is that right?

A. I suppose so.

Q. As each item came in how did you put that on your books?

A. We gave it to the bookkeeper and it was deposited in the bank.

Q. Did your books show that they were borrowed moneys?

A. She put it down as Mrs. Reichert, so much.

Q. Then, came a day when you called in your certified public accountant, isn't that so?

A. Yes.

Q. Do you remember what he advised you as to these items when he first saw them on your books?

A. He said, "Those are loans made to you, aren't they?", and I said, "Yes".

Q. Does that refresh your recollection in any way as to the source of the suggestion that these items were to be put in your books as adjustment in capital?

A. No, it does not.

Q. Doe that refresh your recollection in any way as to the preparation of the financial statement submitted to the County Trust Company?

A. No.

Q. Trustee's Exhibit No. 1 as of December 14, 1931?

A. It does not, in any way.

Q. All of the other items on this statement, were they checked by you before you signed that statement?

A. They were made up by the bookkeeper. I did not go into each and every item.

Q. Was this statement made up by the bookkeeper or was it made up by Mr. Lobell?

A. It was made up by the bookkeeper and Mr. Lobell went over the figures I suppose.

Q. Before you signed it did you go over the figures?

A. I looked at the statement.

[fol. 85] Q. Did you go over the figures?

A. I did not go over the figures.

Q. Do you know whether or not the figures on here are right or wrong?

A. I will have to take the bookkeeper's word for it. I did not check the books, I did not keep the books.

Q. Whose word did you take, the bookkeeper's word or Mr. Lobell's word?

A. Both, I had other things to do, and I could not keep the books.

Q. On the 31st of December, 1930, this statement shows that you had accounts receivable good and not pledged of $117,389.13, is that correct?

A. If it is there it is correct, I suppose.

Q. If it is here, do you also say that the accounts receivable in that sum were all good?

A. That is a hard thing to say, how can I tell you now whether they were all good.

Q. What is your best recollection as to whether they were all good or not?

A. I suppose they were good at that time.

Q. Do you know whether any part of those accounts receivable were in the hands of collection agencies?

A. That is too far—I would have to go over the books to give you an answer to that.

Q. The statement also shows that you had merchandise on hand, cost or market, $57,910.90.

A. Yes.

Q. Is it your recollection that on the 31st day of December, 1930, you did have merchandise of that value on hand?

A. I should think so, otherwise it would not be on the statement.

Q. Do you recall when you first called a meeting of creditors and stated to your creditors that you were unable to continue in business?

A. Yes.

Q. When was that?

A. The beginning of March, 1932.

[fol. 86] Q. On February 10th you sent this statement as of December 31, 1931, to the County Trust Company, and the letter enclosing the statement reads: "As per your request we are attaching financial statement per December 31, 1931, also profit and loss statement for last year prepared by our accountant, Mr. N. Lobell, C. P. A." Does that refresh your recollection as to the last time Mr. Lobell was on your books for you?

A. Probably at the time we sent that letter.

Q. Does it also refresh your recollection that this statement, Petitioning Creditors' Exhibit No. 1 as of this date, was prepared by Mr. Lobell?

A. Yes, it was prepared by him.

Q. Does it also refresh your recollection and does it also indicate that Mr. Lobell O. K.'d this statement, Petitioning Creditors' Exhibit No. 1 as of this date, with the item of loans payable, (partners' relatives) $7,960?

A. I don't know whether he saw the statement after that, I don't know that.

Q. Did Mr. Lobell prepare it?

A. I think he did.

Q. That is, your testimony is that that is a mistake on his part also, that that particular item is included in the statement?

A. He may have overlooked it.

Q. What is your recollection, if you have any?

A. I have no recollection.

PAUL KOLMAR, recalled.

By Mr. Guerin:

Q. Do you agree with all these answers given by Mr. Reichert?

A. I had so little to do with the books that I have to agree with Mr. Reichert's answers. I cannot say anything else.

[fol. 87] Q. Have you any independent recollection?

A. No.

Q. As to how these items were shown on your books?

A. No.

Q. Have you any independent explanation to make as to how in the statement of December 31, 1930, these items appear as adjustment in capital, and in the statement of December 31, 1931, they are shown as loans of partners' relatives?

A. No, I have no explanation.

Q. Is it also your recollection that those statements, that is, Trustee's Exhibit No. 1 of December 14th, and Petitioning Creditors' Exhibit No. 1 of today, were prepared by Mr. Lobell?

A. (No answer.)

Mr. Guerin: I offer this letter in evidence, being letter of February 10th.

(Paper received in evidence and marked Petitioning Creditors' Exhibit No. 2, Dec. 21, 1933.)

(Question repeated by the stenographer.)

The Witness: I think they were.

Q. Do you remember who suggested that the item on the statement submitted to the County Trust Company of February 10, 1931, as of December 31, 1930, should show this particular item as adjustment in capital?

A. I don't remember.

Q. Do you remember whether the suggestion was made by anybody representing the County Trust Company?

A. Not to my knowledge.

Q. Would you say it was not?

A. I never heard anything mentioned.

Q. Do you remember whether or not Mr. Lobell suggested it?

A. I don't remember.
Q. Did you suggest it?
A. I don't remember, I don't think I did.

Hearing closed.

[fol. 88] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE

Upon the affidavit of George Cohen, duly sworn to this 29th day of December, 1933, and upon the application for discharge of William Reichert and Paul Kollmar, individually and as co-partners, trading under the name of W. Reichert & Co., dated October 21st, 1933, and filed in the office of the Clerk of this Court on the 24th day of October, 1933, and upon all the papers and proceedings heretofore had herein, let Charles Weiser, the Clerk of the United States District Court for the Southern District of New York, the Lawyers' County Trust Company, the objecting creditor, Saul S. Myers, its attorney, their representatives, servants, employees and any and all other persons acting for and in their behalf, show cause before me, or one of the Judges of this Court, at a Stated Term of this Court, to be held for the hearing on motions in bankruptcy, at the Courthouse in the Old Post Office Building, in the Borough of Manhattan, City of New York, on the 3rd day of January, 1934, at 10:30 o'clock in the morning, or as soon thereafter [fol. 89] as counsel can be heard why an order should not be entered by this Court, directing that the specifications of the objecting creditor herein should not be vacated and stricken from the records and declared null and void, and why the Clerk should not make and enter an order discharging the above named bankrupts from all debts provable against their estates under the Acts of Congress relating to bankruptcy, except such debts as are excepted by law from such discharge and, in the meantime, pending the final determination of the motion brought on by this order to show cause, and until the service of a copy of an order with notice of entry thereon, setting forth the final determination of the said motion, it is

Ordered that Charles Weiser, Clerk of the United States District Court for the Southern District of New York,

Lawyers' County Trust Company, Saul S. Myers, its attorney, their representatives, servants, employees, and any and all other persons acting for or in their behalf, be and the same hereby are enjoined and restrained from doing any or all acts concerning the proceedings in opposition to the discharge of the bankrupts above mentioned and that all proceedings referred by this Court to Harold P. Coffin, Referee in Bankruptcy, in connection with the discharge of the bankrupts herein, be and the same hereby are enjoined and restrained.

Service of a copy of this order and of the papers above recited, upon which this order is granted, on Charles Weiser, Clerk of the United States District Court for the Southern District of New York, or upon any of his deputy clerks or assistants, and upon Saul S. Myers, attorney for [fol. 90] Lawyers' County Trust Company, on or before twelve o'clock noon of January 2nd, 1934, shall be deemed good and sufficient service.

Dated, New York, December 29th, 1933.

Henry W. Goddard, U. S. D. J.

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF GEORGE COHEN

STATE OF NEW YORK,
City of New York,
County of New York, ss:

GEORGE COHEN, being duly sworn, deposes and says:

That he is an attorney associated with Meyer Marlow, the attorney for the bankrupts herein.

That heretofore and on the 21st day of October, 1933, the bankrupts herein applied to this Court for their discharge from all provable debts.

[fol. 91] That thereafter the motion for discharge came on before a Justice of this Court sitting at a Stated Term for Bankruptcy and was adjourned to the 27th day of December, 1933. Your deponent appeared upon that day on behalf of the bankrupts.

Mr. Guerin, an associate of Saul S. Myers, appeared and filed with the Court his notice of appearance for the Lawyers' County Trust Company, a creditor objecting to the discharge of the bankrupts.

That at that time, Mr. Guerin requested the Court to grant him leave to file the specifications required by General Order 32 by four o'clock of that day. Over the objection of your deponent, such leave was granted.

Thereafter, on the afternoon of December 28th, 1933, your deponent visited the offices of the Clerk of the District Court, intending to inspect such specifications as were to have been filed on the afternoon of the preceding day.

That upon inspection of the Docket, Volume 120, your deponent discovered an entry which read substantially as follows: "Specifications to be filed by twelve o'clock noon, December 28th, 1933." The next entry read: "Specifications filed." The above entry was of December 28th, 1933.

Your deponent thereupon requested the Clerk to show him the specifications that had been filed and, upon examining them, found the following notation on the cover thereof: "Specifications to be filed December 28th, 1933, by twelve noon."

I stated to Mr. Rogers, the deputy clerk who had given me the papers, that upon the preceding day, Judge Goddard, the Judge presiding over the Bankruptcy Part, had [fol. 92] granted the office of Saul S. Myers leave to file specifications by four o'clock of that same day, December 27th, 1933. He thereupon explained to me that such extension had been granted by Judge Goddard upon the application of Howard Myers, a partner in the firm of Saul S. Myers on the morning of December 28th, 1933.

General Order 32 of the Supreme Court of the United States reads as follows: "A creditor opposing an application for discharge, or for the confirmation of a composition or extension proposal, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall at the same time file a specification in writing of the grounds of his opposition."

Under this section, the granting of an extension beyond the date of the hearing on the discharge is unauthorized and the Court had no jurisdiction or power to grant such an extension. The fact is that the specifications so unlawfully filed are null, void and of no effect.

The Supreme Court, in promulgating this new General Order, in the month of April, 1933, removed from the dominion of the District Court any right to exercise its discretion as to the filing of specifications.

In view of the foregoing, it is submitted that there are in fact no valid specifications on file against the application for discharge and therefore an order should be entered granting the discharge of the bankrupts herein and directing the Clerk of the Court to file such discharge.

The reason that this motion is sought to be brought on by an Order to Show Cause and not by a Notice of Motion is so that a stay of the proceedings upon the specifications [fol. 93] might be obtained and so that a determination of this motion may be had before a hearing upon the specifications.

That no previous application has been made for the relief herein sought.

George Cohen.

Sworn to before me this 29th day of December, 1933. Julia Jaffe, Notary Public, Bronx County, Bronx Co., Clks. No. —, Reg. No. 2J185, N. Y. Co., Clks. No. 130, Reg. No. 5J35, Kings Co., Clks. No. 2A, Reg. No. 5039, Commission expires March 30, 1935.

In United States District Court

[Title omitted]

Affidavit of Saul S. Myers

United States of America,
Southern District of New York, ss:

Saul S. Myers, being duly sworn, deposes and says:

[fol. 94] 1. I am the attorney for the Lawyers County Trust Company, the objecting creditor herein, with a claim of $1,917.62.

2. On the return day of the application for a discharge herein Judge Goddard directed that the specifications be filed before 4 P. M. It was not physically possible to finish the specifications and have them verified within that time

and therefore at about 2 P. M. application was made to Judge Goddard, in open court, for further time so that the specifications could be typewritten and verified. The time was thereupon extended to 12 o'clock noon of the following day.

3. It was pointed out to Judge Goddard and is here reiterated that:

(a) We had a similar matter on before Judge Goddard on the same day, to wit the matter of Ruth Bernstein, Bankrupt, which came before the Court from Referee Stephenson. Both the Bernstein matter and this matter required very careful attention and Judge Goddard made the same disposition about the time of the filing of the specifications in both matters.

(b) The most important part of the material for the specifications in this matter only came to light on December 21, 1933, at the first meeting of creditors. The information was elicited by counsel for the Irving Trust Company. There had been no examination of the bankrupts prior to December 11, 1933. Very little was accomplished on December 11, 1933, because the bankrupts did not have in court the books and records which counsel for the Irving Trust Company regarded as essential. These books and records, among others, were the bank books and records of their wives.

[fol. 95] (c) Orie R. Kelly, President of the Lawyers County Trust Company, had just left the hospital where he had undergone a very serious operation, and it was necessary to secure his instructions before these specifications could be filed.

4. I have had charge of this matter on behalf of the Lawyers County Trust Company and from the papers which I have examined and the investigations which I have made I am of the opinion that the specifications are sound and can be proven and that this is a situation where the bankrupts not only secured a large loan from the objecting creditor by reason of a false financial statement but the individual bankrupts committed perjury in respect of that financial statement upon their examination before the referee in bankruptcy.

5. I beg to refer, upon this motion, to the following papers:

(a) The adjudication in bankruptcy and all of the papers upon which it was founded including the motions in respect of the same;

(b) All of the testimony taken before the referee; and

(c) The specifications filed in opposition to the bankrupts' application for a discharge, and the exhibits.

Saul S. Myers.

Sworn to before me this 5th day of January, 1934.
Frank J. Carey, Notary Public, Queens County,
Certificate filed in New York County.

[fol. 96] In United States District Court, Southern District of New York

In Bankruptcy, No. 56,603

In the Matter of William Reichert and Paul Kollmar, Individually and as Co-partners Trading under the Name of W. Reichert & Co., Bankrupts

Saul S. Myers and Joseph K. Guerin, for Petitioning Creditor.

Meyer Marlow (Stanley M. Dorman, of Counsel), for Bankrupts.

Opinion, Patterson, D. J.

Patterson, D. J.:

The bankrupts applied for discharge. On December 27, 1933, the day when the creditors were required to show cause to the contrary, the attorney for an objecting creditor filed a notice of appearance in opposition. Instead of filing specifications on that day, he procured an ex parte order permitting him to file specifications the next day. The specifications were accordingly filed the next day. The bankrupts now bring a motion to have the specifications disregarded and an order of discharge entered.

The practice as to opposing a bankrupt's application for discharge is governed by General Order 32 of the Supreme [fol. 97] Court. That order formerly provided that an objecting creditor should enter his appearance on the return day of the application and should file a specification of his grounds "within ten days thereafter, unless the time shall be shortened or enlarged by special order of the judge". The order was amended on April 17, 1933, so as to require that the specification as well as the notice of appearance be filed on the return day. The provision relative to acceleration or extension of the time for filing specifications was omitted. The order now reads:

"A creditor opposing an application for discharge, or for the confirmation of a composition or extension proposal, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall at the same time file a specification in writing of the grounds of his opposition".

The contrast between the old and the new rule is significant. It seems manifest that the judge no longer has power to extend the time for interposing specifications beyond the time fixed in the rule. The dropping of the clause that allowed elasticity must be deemed to have been deliberate and intended to work a change in the practice. This is the view of the amended rule that has been taken by Judge Hincks in the District of Connecticut and by the late Judge Lowell in the District of Massachusetts. In re Hodges, 4 Fed. Supp. 804; In re Corcoran, 4 Fed. Supp. 988. It may be that bankrupts not entitled by substantive law to win a discharge will get one because of the speed in procedure required of creditors under the new rule. That [fol. 98] is a matter that the district court cannot take into account.

The court had no power to extend the time for filing specifications beyond the return day of the application. The specifications were filed too late and must be disregarded. The motion will accordingly be granted and an order of discharge entered.

Robert P. Patterson, U. S. D. J.

January 9, 1934.

IN UNITED STATES DISTRICT COURT

Present Hon. Robert P. Patterson, District Judge

In the Matter of WILLIAM REICHERT and PAUL KOLLMAR, Individually and as Co-partners Trading under the Name of W. Reichert & Co., Bankrupts

ORDER FOR DISCHARGE—January 10, 1934

A motion having been made herein by William Reichert and Paul Kollmar, the above mentioned bankrupts, for an [fol. 99] order vacating the specifications heretofore filed by Lawyers County Trust Company, the objecting creditors herein, and directing the Clerk of the Court to enter the discharge of the bankrupts, and the said motion having duly come on to be heard before me on the 3rd day of January, 1934,

Now, upon reading the order to show cause dated December 29th, 1933, the affidavit of George Cohen duly sworn to the 29th day of December, 1933, in support of said motion, and the affidavit of Saul S. Myers duly sworn to the 5th day of January, 1934, in opposition thereto, and after hearing Stanley M. Dorman, of counsel for Meyer Marlow, Esq., attorney for the bankrupts herein, in support of said motion, and Joseph K. Guerin, of counsel for Saul S. Myers, Esq., attorney for the objecting creditor herein, and after reading and filing all the papers and proceedings heretofore had herein, and due deliberation having been had, now, upon reading and filing the opinion of the Court, it is, on motion of Meyer Marlow, Esq., attorney for the bankrupts,

Ordered that the said motion be and the same hereby is granted, and it is further

Ordered that the specifications heretofore filed by Lawyers County Trust Company in the above proceedings, be and the same hereby are vacated, disregarded, and a nullity, and it is further

Ordered that Charles Weiser, the Clerk of the United States District Court for the Southern District of New [fol. 100] York, be and he hereby is directed to enter forthwith the discharge of William Reichert and Paul Kollmar, individually and as co-partners trading under the name of W. Reichert & Co.

Robert P. Patterson, U. S. D. J.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL

The petitioner herein, Lawyers County Trust Company, conceiving itself aggrieved by the order and judgment entered herein on January 10, 1934, granting a discharge to William Reichert and Paul Kollmar, individually and as co-partners trading under the name of W. Reichert & Co., and to the firm of W. Reichert & Co., and vacating the specifications filed herein by the Lawyers County Trust Company on December 28, 1933, hereby appeals therefrom [fol. 101] to the United States Circuit Court of Appeals for the Second Circuit, and prays that its appeal be allowed, and that a citation may be issued to the said William Reichert and Paul Kollmar and to the firm of W. Reichert & Co., commanding them and each of them to appear before the United States Circuit Court of Appeals for the Second Circuit, to do and to receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings and opinion in the matter of their said petition for a discharge, in the said proceeding, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Second Circuit, and that the said order and judgment of the District Court of the United States for the Southern District of New York may be reversed, and such order made as to the said United States Circuit Court of Appeals for the Second Circuit may seem meet and just.

Dated, January 17, 1934.

Lawyers County Trust Company, by John J. Spillane, Assistant Secretary, Petitioner.

Duly sworn to by John J. Spillane. Jurat omitted in printing.

[fol. 102] IN UNITED STATES DISTRICT COURT

ALLOWANCE OF APPEAL

Appeal allowed January 17, 1934.

William Bondy, U. S. D. J.

[fol. 103] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS

Now comes Lawyers County Trust Company which files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above entitled cause, from the order and judgment, made by this Honorable Court on January 10, 1934, granting to the above named bankrupts a discharge and vacating the specifications filed herein by the Lawyers County Trust Company on December 28, 1933:

1. The Court erred in dismissing the specifications herein and granting to the bankrupts and to each of them a discharge of their debts.

2. The Court erred in ignoring the one-day extension of time granted by Judge Goddard for the filing of specifications.

3. The Court erred in holding that under General Order 32 of the Supreme Court of the United States, as amended on April 17, 1933, the District Court no longer has power to extend the time for interposing specifications beyond the time fixed in the rule, to wit, the return of the order to [fol. 104] show cause why the bankrupts should not receive a discharge.

Dated, January 17, 1934.

Lawyers County Trust Company, by John J. Spillane, Assistant Secretary, Appellant.

Saul S. Myers, Attorney for Appellant, 60 Wall Street, New York City.

Duly sworn to by John J. Spillane. Jurat omitted in printing.

[fol. 105] Citation, in usual form, omitted in printing.

[fol. 106] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, February —, 1934.

Saul S. Myers, Attorney for Appellant. Meyer Marlow, Attorney for Appellees.

[fol. 107] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 108] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1933

No. 396

Argued April 30, 1934. Decided Aug. 17, 1934

In the Matter of WILLIAM REICHERT and PAUL KOLLMAR, Individually and as Copartners Trading under the Name of W. Reichert & Co., Bankrupts,

LAWYERS COUNTY TRUST COMPANY, Appellant

Appeal from the District Court of the United States for the Southern District of New York

Before Manton, Augustus N. Hand, and Chase, Circuit Judges

Appeal from an order of the District Court for the Southern District of New York striking out specifications of objection to the granting of a discharge in bankruptcy because not filed on the day when the creditors were required to show cause and from the granting of the discharge. Dismissed in part and affirmed in part.

Howard Myers, of New York City (Saul S. Myers and Joseph K. Guerin, both of New York City, of counsel), for appellant.

Meyer Marlow, of New York City (Stanley M. Dorman and George Robert Cohen, both of New York City, on the brief), for appellees.

CHASE, Circuit Judge:

In this action in bankruptcy an order had been made requiring creditors to show cause on a day certain why a discharge should not be granted. On that day attorneys for a creditor, representing that but recently facts had been discovered on which it was desired to base objections to a discharge, and that as the grounds of opposition were charges so serious that authorization for filing specifications containing them should first be given by the president of the objecting creditor who had been confined in a hospital and had had no opportunity to consider the matter, obtained

leave from the judge to file such specifications on the following day, and did then file them. Upon motion the specifications so filed were later stricken out, and the judge who took this action at the same time and in the same order directed the clerk "to enter forthwith the discharge" of the bankrupts. From this order the objecting creditor took an appeal without first obtaining leave.

It is claimed that there should be a dismissal of the appeal on the ground that the order was not appealable as of right. So far as that part of the order which struck out the specifications is concerned, leave to appeal was necessary as is shown by United Wall Paper Factories v. Hodges (C. C. A.) 70 F. (2d) 243. But here, as in the case just mentioned, the part of the order granting the discharge was appealable without leave, and, as the order to strike was an essential step in granting the discharge, it may be considered on the assignments of error. It is said that the only order so appealable is the formal entry made by the clerk which alone is final. Of course the order must be final, but the finality that is required is the action which disposes of the matter by way of judicial determination. France & Canada S. S. Co. v. French Republic (C. C. A.) 285 F. 290; Sullivan v. Associated Billposters and Distributors (C. C. A.) 6 F. (2d) 1000, 42 A. L. R. 503. Nothing remained to be done at the time this appeal was taken other than for the clerk to comply with the order of the judge. That was a [fol. 109] purely ministerial act which followed as a matter of course. The order was final when the appeal was taken. Compare Gas & Electric Securities Co. v. Manhattan & Queens Traction Corp. (C. C. A.) 266 F. 625.

We have held that without good cause shown a District Judge has no power, after General Order 32 was amended and the amendment became effective on April 24, 1933 (11 U. S. C. A. § 53), to extend the time for filing specifications of objection beyond the day when creditors are required to show cause. Now we have what appears to have been good and sufficient cause for granting an extension of one day for the filing of such specifications, and the question of power to grant any extension is squarely presented.

Before General Order 32 was amended in April, 1933, it read:

"A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition,

shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be shortened or enlarged by special order of the judge."

The amendment altered it to read:

"A creditor opposing an application for discharge, or for the confirmation of a composition or extension proposal, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall at the same time file a specification in writing of the grounds of his opposition."

The change was, of course, deliberate and appears to us to be highly significant. Before, the judge had the express power to shorten or enlarge the time for filing specifications of objection, but by the amendment, all such power was withdrawn. Indeed, the sole purpose of the amendment, aside from including an extension proposal within its coverage, seems to have been to do away with this express power and more strictly limit the opportunity to create delays in administration even at the expense of some flexibility. Unless this is so, the amendment merely made the day when creditors are required to show cause the rule day for filing specifications of objections instead of the ten-day period immediately following, and left the actual time after the return day still wholly in the sound discretion of the judge. This view of the amendment requires a reading in by construction of all of the final clause of the order which was omitted by the amendment except the words "shortened or," and we can reach no other conclusion than that, if it had been the purpose to leave such power in the judge, the language by which it had before been expressly conferred would not have been omitted.

So we think the filing of specifications of objection on the day when creditors are required to show cause is an absolute condition upon their right to oppose a discharge unless the judge may enlarge the time under the power conferred by General Order 37 (11 U. S. C. A. § 53). Under that "* * * the judge may, by special order in any case, vary the time allowed for return of process, for appearance and pleading. * * *" That the specifications of objections

must be considered a part of the pleadings is evident. Yet we do not think such specifications can properly be classed with pleadings generally and the time for filing varied in the discretion of the judge because for many years they have for this purpose been especially dealt with in General Order 32 and still are. That order has the force of a specific statute relating to its subject-matter, Wilkinson v. Walker (D. C.) 292 F. 395, and must, under familiar rules of construction, take precedence over general legislation which might otherwise control. The change was merely one of procedure and not of any substantive provisions of the law and so clearly within the power of the Supreme Court. Cases construing the order before amendment are not now helpful, since the very purpose of the amendment was to work a change in the procedure upheld in those decisions.

Order affirmed.

[fol. 110] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court-rooms in the Post Office building in the City of New York, on the 24th day of August, one thousand nine hundred and thirty-four.

Present: Hon. Martin T. Manton, Hon. Augustus N. Hand, Hon. Harrie B. Chase, Circuit Judges.

In the Matter of WILLIAM REICHERT and PAUL KOLLMAR, etc., Bankrupts,

LAWYERS COUNTY TRUST COMPANY, Appellant

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be, and it hereby is, affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 111] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. In re William Reichert, etc. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Aug. 24, 1934. William Parkin, Clerk.

[fol. 112] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 111, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of In the Matter of William Reichert and Paul Kollmar, etc., Bankrupts; Lawyers County Trust Company, Appellant, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 15th day of October, in the year of our Lord one thousand nine hundred and thirty-four, and of the Independence of the said United States the one hundred and fifty-ninth.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 113] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 3, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following No. 292.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 39,124. U. S. Circuit Court of Appeals, Second Circuit. Term No. 496. Lawyers County Trust Company, Petitioner, vs. William Reichert and Paul Kollmar, individually and as co-partners trading under the name of W. Reichert & Co. Petition for a writ of certiorari and exhibit thereto. Filed October 26, 1934. File No. 496, O. T., 1934.

(5698-C)